

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

**WEDNESDAY 10 MARCH 2021**



**Ashleigh Sherry**  
**Manager Business System and Administration**





**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 10 March 2021  
in the  
Commencing at**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 2 March 2021	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2020/1745 - 92 Addison Road, Manly - Alterations and additions to a dwelling house .....	5
3.2	DA2020/1058 - 23 Parkview Road, Fairlight - Alterations and additions to an existing semi-detached dwelling .....	44
3.3	MOD2020/0586 - 3 Mulgowrie Crescent, Balgowlah Heights - Modification of Development Consent 10.2013.45.1 granted for alterations and additions to an existing dwelling.....	82
3.4	DA2020/1372 - 15 Oyama Avenue MANLY - Alterations and additions to a dwelling house .....	110
3.5	DA2020/1072 - 1 Drew Place BELROSE - Construction of a Seniors Housing development, including demolition works, new access driveway and front fence.....	195

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 2 MARCH 2021**Error! Bookmark not defined.

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 2 March 2021 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1                      DA2020/1745 - 92 ADDISON ROAD, MANLY - ALTERATIONS  
AND ADDITIONS TO A DWELLING HOUSE

**REPORTING MANAGER**

**TRIM FILE REF**                      2021/163110

**ATTACHMENTS**                      1 Assessment Report  
   2 Site Plan & Elevations  
   3 Clause 4.6

**PURPOSE**

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to DA2020/1745 for Alterations and additions to a dwelling house on land at Lot 4 DP 258309, 92 Addison Road, Manly, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1745
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 4 DP 258309, 92 Addison Road MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a semi detached dwelling
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Albert Chapman Angela Louise Holm
<b>Applicant:</b>	Robert Albert Chapman Angela Louise Holm
<b>Application Lodged:</b>	06/01/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/01/2021 to 01/02/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 31.67%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 45,000.00

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2020/1745 for alterations and additions to an existing semi-detached dwelling.

The maximum Floor Space Ratio (FSR) for the site is 0.6:1 (187.98sqm of gross floor area). The FSR of the proposed development equates to 0.79:1 (246.2sqm of gross floor area), which represents a 31.67% variation from the FSR Development Standard. Any variations to a Principal Development Standard that exceed 10% are required to be referred to the DDP if the works pertain to Class 1 structure.

The additional gross floor area resulting from the proposed development equates to 19.11sqm. It is important to note that the additional gross floor area is confined to an existing building footprint within

the basement storage area. The FSR on the site is only increased as habitable areas within the basement level are included in gross floor area calculations, whereas basement storage is excluded. It is also important to note that the existing FSR on the site is non-compliant and measures at 0.72:1 (227.09sqm GFA), which represents a 20% variation from the FSR Development Standard.

The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 31.67% variation to Clause 4.4 of the MLEP 2013.

The proposed development has been assessed on its merits and is found to be acceptable. Therefore, it is recommended that the DDP approve this application, subject to the conditions attached to this report.

### **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing semi-detached dwelling. Specifically, the proposal comprises converting existing basement storage into a study with a bathroom. Minor demolition works are also proposed to accommodate for a door and window glazing.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 4 DP 258309 , 92 Addison Road MANLY NSW 2095

**Detailed Site Description:**

The subject site consists of one allotment located on the south-eastern side of Addison Road, Manly. Vehicular access is provided via a right of carriageway at the rear of the site, whilst pedestrian access can be obtained from the front or rear of the site.

The site is regular in shape with a frontage of 7.625m along Addison Road and a depth of 42.06m. The site has a surveyed area of 313.3sqm.

The site is located within the R1 General Residential zone pursuant to the MLEP 2013 and accommodates a part-1 part-2 storey semi-detached dwelling. The subject dwelling is identified as Heritage Item No. 175 'Group of dwellings', which is located across 57, 63, 86, 86A and 88-106 Addison Road and 16 Osbourne Road.

The site is devoid of any significant canopy trees and contains numerous shrubs and palm trees along the south-western side boundary.

The site is not burdened by any natural site constraints.

**Detailed Description of Adjoining and Surrounding Development**

Adjoining and surrounding development consists of low and medium density residential development, typically 1 - 3 storeys in height.

Map:



**SITE HISTORY**



The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Pre-lodgement Meeting No. PLM2020/0253

A pre-lodgement meeting (PLM) was held on 5 November 2020 to discuss the proposed development. .

**Application History**

The Assessment Officer undertook a site visit at the subject site and examined the site's surrounds on 3 February 2021.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.



## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/01/2021 to 01/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b> <b>Manly Local Environmental Plan (MLEP)</b></p> <ul style="list-style-type: none"> <li>• Clause 6.5 (Terrestrial Biodiversity)</li> </ul> <p><b>Manly Development Control Plan (MDCP)</b></p> <ul style="list-style-type: none"> <li>• Clause 3.3.1. a) iv) Landscaping Design</li> <li>• Clause 5.4.2 (Threatened Species and Critical Habitat Lands)</li> </ul> <p>The proposal involves the conversion of a storage area into a study, including the reconfiguration of the room's entry. As the proposal is located wholly within the existing footprint, and does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>HERITAGE COMMENTS</b></p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject property is included in <b>Item 175 - Group of Dwellings</b> - 57, 63, 86, 86A and 88-106 Addison Road and 16 Osbourne Road, listed in Schedule 5 of the Manly Local Environmental Plan 2013. It also adjoins <b>Item 12 - All Stone Kerbs</b> and within the vicinity of heritage listed items:</p> <p><b>Item 170 - 2 terrace houses</b> - 59-61 Addison Road</p> <p><b>Item 176 - Street trees</b> - Addison Road (from Bruce Avenue to Reddall Street)</p> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Northern Beaches heritage inventory are as follows:</p> <p><b>tem 175 - Group of Dwellings</b></p>

Internal Referral Body	Comments																		
	<p><u>Statement of significance:</u> The streetscape has major significance as a pleasing mixture of late 19th and early 20th century residential architecture of varying scale and style.</p> <p><u>Physical description:</u> This section of Addison Road contains a well maintained mixture of late 19th and early twentieth century residential development consisting of brick or rendered brick, single and two storey and semi-detached buildings. Significant elements in the streetscape include tile and slate roofs, bull nose verandahs, gables and chimneys and the mature street planting.</p> <p><b>Item 12 - All Stone Kerbs</b> <u>Statement of significance:</u> Stone kerbs are heritage listed.</p> <p><u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p><b>Item 170 - 2 terrace houses</b> <u>Statement of significance:</u> Representative examples of Victorian Italianate Terrace style dwellings. An imposing and uncommon Victorian structure for local area and contribution to streetscape.</p> <p><u>Physical description:</u> A two storey Victorian Italianate terrace of two dwellings. Imposing mass and extensive cast iron decoration including front fence, make this building significant in the streetscape.</p> <p><b>Item 176 - Street trees - Addison Road (from Bruce Avenue to Reddall Street)</b> <u>Statement of significance:</u> Permanent mature street planting of late 19th century and early 20th century (from Bruce Avenue to Reddall Street)</p> <p><u>Physical description:</u> Mixture of species planted in carriageway; includes Norfolk Island Pines, Port Jackson Figs, Ficus Hilli.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th</td><td>No</td><td></td></tr></table>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th	No	
Other relevant heritage listings																			
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th	No																		

Internal Referral Body	Comments
	Century Buildings of Significance
	Other
	N/A
	Consideration of Application
	The proposal seeks consent for the conversion of an existing storage area into a study, including the reconfiguration of the room's entry and the demolition of the existing external stone wall to facilitate access and natural lighting. No excavation or modification to the existing party wall and door to the undercroft area are proposed as part of the works.
	During the pre-lodgement meeting follow-up discussions with the architect, it was agreed that the stone wall between the existing door and window would be retained to maintain the existing fenestration, however this wall is proposed to be demolished in the DA drawings. Heritage recommends this wall to be retained.
	Given the minor nature of the proposed works and being unlikely to be viewed from the street, it is considered that the impact of the proposal upon the significance of the heritage listed group of items and the heritage listed items in the vicinity will be negligible.
	Therefore, no objections are raised to the proposal subject to three conditions.
	Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? Heritage concerns have been addressed in SEE.
	Further Comments
	COMPLETED BY: Oya Guner, Heritage Advisor  DATE: 17 February 2021

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment, therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

#### **Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### **Principal Development Standards**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings:	8.5m	no change to building height	-	Yes
Floor Space Ratio	FSR: 0.6:1 (187.98sqm GFA)	Existing 0.72:1 (227.09sqm GFA) FSR: 0.79:1 (246.2sqm GFA)	20% 31.67%	<b>No</b>

#### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>
4.3 Height of buildings	Yes
4.4 Floor space ratio	No

Clause	Compliance with Requirements
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

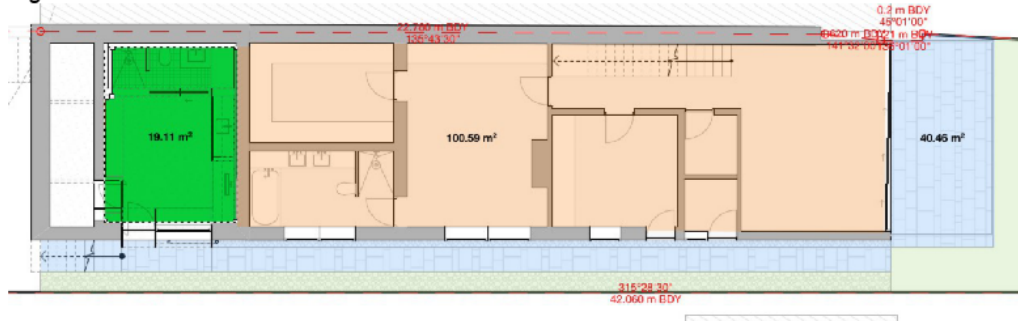
#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.6:1
Proposed:	0.79:1
Percentage variation to requirement:	31.67%

The proposed Floor Space Ratio (FSR) for the site measures at 0.79:1 (246.2sqm GFA), which results in a 31.67% variation from the applicable FSR Development Standard of 0.6:1 (187.98sqm GFA). The additional gross floor area resulting from the proposed development equates 19.11sqm and is depicted in Figure 1 below. It is important to note that the additional gross floor area is confined to an existing building footprint within the basement storage area. The FSR on the site is only increased as habitable areas within the basement level are included in gross floor area calculations, whereas basement storage is excluded. It is also important to note that the existing FSR on the site is non-compliant and measures at 0.72:1 (227.09sqm GFA), which represents a 20% variation from the FSR Development Standard.

**Figure 1: Additional FSR on the site**



##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 Floor Space Ratio development standard, has



taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

*"Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. This section demonstrates that the impacts of the variation will be consistent with the external site impacts that may be reasonably expected by a complying development about the following:*

- *The proposed development noncompliance with FSR will not result in a significant intensification of the use;*
- *The proposed alterations will not impact the dwelling's consistency with established setbacks or bulk and scale as all alterations occur within the existing building envelope;*
- *Despite the non-compliance in FSR the proposed development will provide a high level of amenity to surrounding properties, with no changes to overshadowing proposed;*
- *It will not impact on the heritage conservation of the area;*
- *The proposed development is in keeping with the desired future character of the area".*

Comment:

It is agreed that the proposed development will not result in a significant intensification of the land use, given the study will serve as an ancillary function to the semi-detached dwelling land use, with suitable conditions recommended to ensure the area is not used or converted to be used for separated habitation.

It is also accepted that the additional FSR will not impact the dwelling's consistency with established setbacks or bulk and scale, given the works are confined to an existing building footprint. The works will not be visible from the public domain and will not alter the perceived bulk and scale of the structure when viewed from public and private lands.

It is also agreed that the proposed development will not significantly detract from the amenity of adjoining properties. The works will not increase the footprint or envelope of the existing structure and therefore, will not result in additional overshadowing of adjoining properties. Furthermore, new glazing on the south-western elevation does not directly overlook into windows or private open space on the south-western adjoining site (90 Addison Road). Existing vegetation running contiguous to the south-western boundary will continue to provide a visual buffer between 92 and 90 Addison Road, although not solely relied upon for visual privacy. Furthermore, noting the works are confined to the basement level, no view impacts are anticipated to arise.

It is also accepted that the proposal will not have an adverse impact upon the heritage significance of the area, noting that Council's Heritage Officer is supportive of the proposal, subject to conditions.

For the reasons stated above, Council can be satisfied that the proposal will maintain an appropriate visual relationship with the surrounding built environment.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of



the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio Development Standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The works are confined to an existing basement area and will not alter the existing building footprint and envelope. Therefore, the bulk and scale of the structure will remain unchanged when viewed from the public domain and adjoining properties.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The works are confined to an existing building footprint and will not result in the removal of trees or significant vegetation.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The overall footprint and envelope of the structure will remain unaltered and therefore, the proposal will continue to maintain an appropriate visual relationship with the surrounding built environment. The landscape character of the site will remain unchanged.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

As noted earlier within this report, the proposal will not result in the removal of vegetation. Furthermore, the proposal has been appropriately designed to minimise adverse amenity impacts.

*e) to provide for the viability of business zones and encourage the development, expansion and*

*diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

The proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*

Comment:

The proposal is for alterations and additions to an existing semi-detached dwelling and will provide for the housing needs of the community.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal maintains a residential land use within the R1 General Residential zone.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal continues to maintain a residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone and the FSR Development Standard.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

## 5.10 Heritage conservation

Council's Heritage Officer has reviewed the proposal against the requirements of this clause and raised no objections, subject to a condition requiring the existing stone wall between the door and window on the south-west elevation of the lower floor to be retained, which will preserve the heritage significance of the heritage building.

## 6.9 Foreshore scenic protection area

The site is identified within the 'Foreshore Scenic Protection Area' pursuant to the MLEP 2013. Therefore, the provisions of this clause must be considered prior to granting consent.

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

### Comment:

The works are visually and physically separated from the foreshore and therefore, will not have an adverse impact upon the visual qualities of the foreshore area. The works are confined to a basement area and do not increase the footprint and envelope of the existing building. Therefore, the proposal will not result in a loss of views towards the foreshore. Given the nature of the works are separation from the foreshore, the proposal will not result in conflicts between land-based and water-based activities.

### Concluding Remarks

Based on the above assessment, it is concluded that the proposal demonstrates consistency with Clause 6.9 of the MLEP 2013.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 313.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling on 313.3sqm site	-	Yes
	Dwelling Size: minimum 117sqm GFA required for housing density	246.2sqm GFA	-	Yes
4.1.2.1 Wall Height	North-East: N/A - Semi-detached dwelling party wall	N/A	N/A	N/A
	South-West: 7.1m (based on gradient 1:10)	no change to wall height	-	Yes

4.1.2.2 Number of Storeys	2 storeys	2 storeys - as existing	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	no change to roof height	-	Yes
	Pitch: maximum 35 degrees	no change to roof pitch	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	no change to front building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North-East: N/A - Semi-detached dwelling party wall	N/A	N/A	N/A
	South-West: 2.27m (1/3 of max. wall height on SW elevation)	no change to SW side setback	-	Yes
	Windows: no windows within 3m of side boundaries	Window W-001 setback 1.545m from SW side boundary	48.5%	No
4.1.4.4 Rear Setbacks	8m	no change to rear setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	no change to total open space	-	Yes
	Open space above ground 25% of total open space	no change to total open space above ground	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	no change to landscaped area	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm - no change	-	Yes
Schedule 3 Parking and Access	Dwelling: 2 spaces	2 spaces via rear ROW	-	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

##### **4.1.3 Floor Space Ratio (FSR)**

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation. It is noted that the site is not an 'undersized allotment', therefore further exemptions to the FSR control are not applied.

##### **4.1.4 Setbacks (front, side and rear) and Building Separation**

#### Description of non-compliance

The control states that windows must not be located within 3m from side boundaries. The Window W-001 is setback 1.545m from the south-western side boundary, which fails to meet this requirement. It is important to note that the window is being installed on an existing external wall.

#### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying



objectives of the control as follows:

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The overall footprint and envelope of the structure will remain unaltered and therefore, the proposal will continue to maintain an appropriate visual relationship with the surrounding built environment. The landscape character of the site will remain unchanged.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The works will not increase the footprint or envelope of the existing structure and therefore, will not result in additional overshadowing of adjoining properties. Furthermore, new glazing on the south-western elevation does not directly overlook into windows or private open space on the south-western adjoining site (90 Addison Road). Existing vegetation running contiguous to the south-western boundary will continue to provide a visual buffer between 92 and 90 Addison Road, although not solely relied upon for visual privacy. Furthermore, noting the works are confined to the basement level, no view impacts are anticipated to arise. The works will not be visible from the street frontage and therefore, will not reduce road visibility. Overall, the proposal achieves this objective.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment:

Flexibility is afforded in this circumstance as the window is located on an existing external wall and will not result in adverse privacy impacts, notwithstanding the 3m separation requirement.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The works do not result in the removal of deep soil landscaping or vegetation.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

The site is not bushfire prone.

Concluding Remarks

Having regard to the above assessment, it is concluded the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development involves alterations and additions to an existing semi-detached dwelling.

The FSR of the proposed development equates to 0:79:1 (246.2sqm of gross floor area), which represents a 31.67% variation from the FSR Development Standard. However, the works are confined to an existing basement footprint and do not alter the overall envelope or footprint of the existing building.

When considered on merit, the proposed development is considered to be acceptable. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.4 Floor Space Ratio Development Standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/1745 for Alterations and additions to a semi detached dwelling on land at Lot 4 DP 258309, 92 Addison Road, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

--



Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2005_DA.01 (Revision A) - Site Analysis	14/12/2020	Lintel Studio
2005_DA.03 (Revision A) - Demolition Lower Ground Floor Plan	14/12/2020	Lintel Studio
2005_DA.05 (Revision A) - Proposed Lower Ground Floor Plan	14/12/2020	Lintel Studio
2005_DA.06 (Revision A) - East Elevation	14/12/2020	Lintel Studio
2005_DA.07 (Revision A) - Section A	14/12/2020	Lintel Studio
2005_DA.08 (Revision A) - Section B	14/12/2020	Lintel Studio
2005_DA.10 (Revision A) - Schedule of External Finishes	14/12/2020	Lintel Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Ref. 33739BMrpt	21/12/2020	JK Geotechnics

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	9/12/2020	Lintel Studio

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a semi-detached dwelling. The *Manly Local Environmental Plan 2013* defines this land use as follows:

***semi-detached dwelling*** means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

## 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

#### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

6. **Retention of the external stone wall**

The existing stone wall between the door and window on the south-west elevation of the lower ground floor must be retained.

Details demonstrating compliance must be submitted to the Certifying Authority and Council prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the heritage listed building.

7. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

8. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

#### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

10. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

11. **Protection of heritage listed street trees**

The heritage listed mature tree located in the road reserve in front of the property is to be protected at all times during demolition and construction works.

Reason: To protect the heritage listed tree from damage, during demolition and construction works.

12. **Protection of heritage listed stone kerb**

The existing sandstone kerb is to be protected from damage during demolition and construction.

Reason: Protection and preservation of cultural resources within the Manly municipal area.

13. **Protect Grassed Foraging Areas – Bandicoot Habitat**



There is to be no off-loading or storage of construction materials or debris on the road reserve to the north of the property. The integrity of the grass must be preserved at all times.

Reason: To prevent direct physical injury to Long-nosed Bandicoots and allow for foraging activity. This area is likely to be used by bandicoots for foraging.

#### **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

14. **No Weeds Imported On To The Site**

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

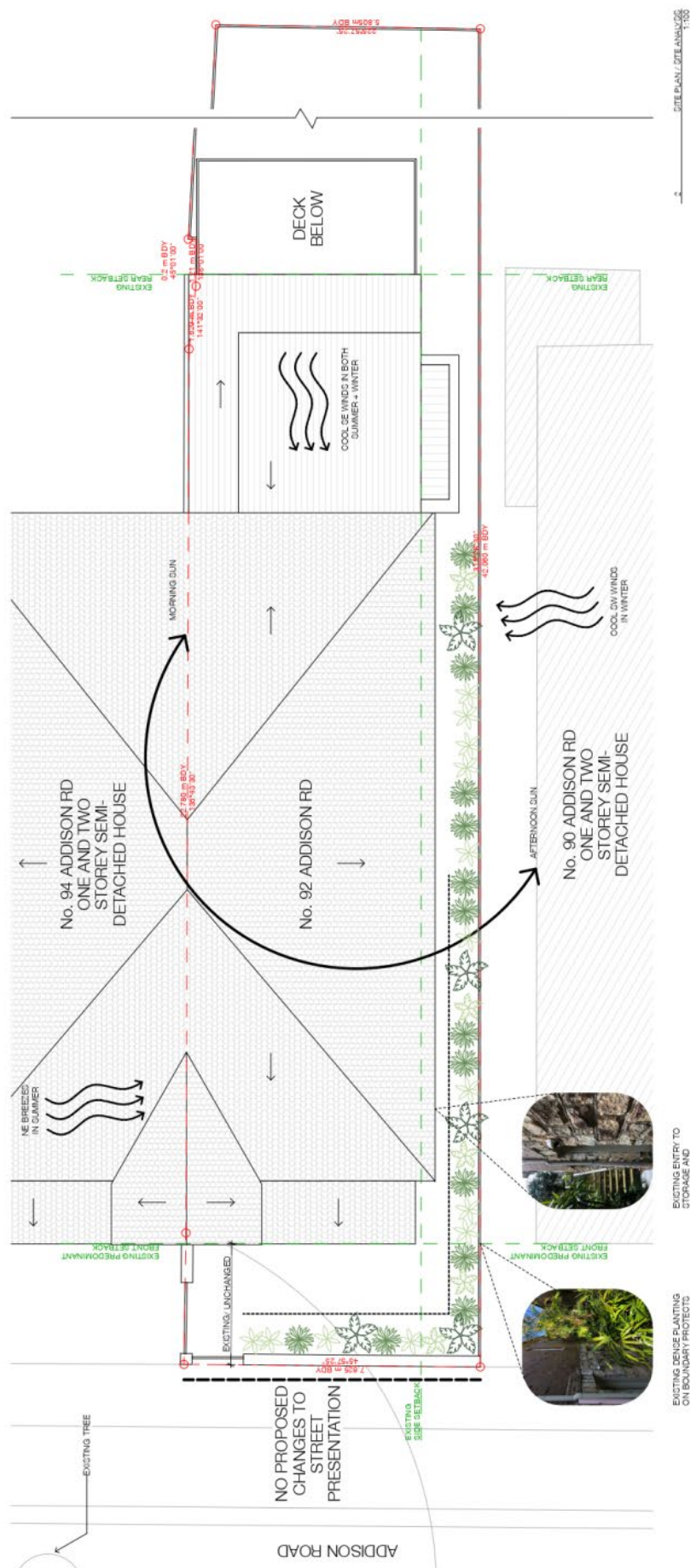
Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

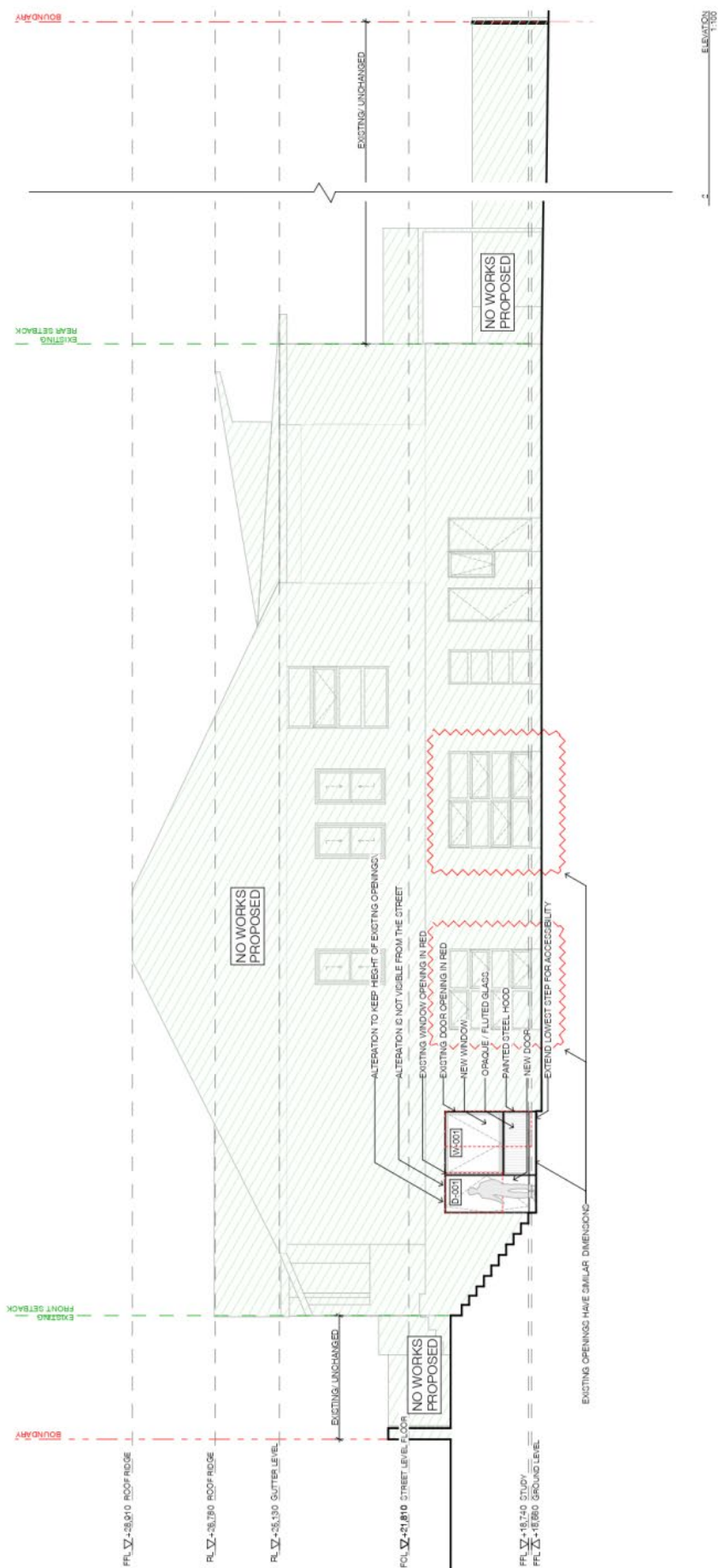
#### **ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

15. **Lower Ground Floor not to be used for Separate Occupancy**

The approved floor space within the lower ground floor/basement is not permitted to be used, or adapted to be used, for separate occupancy. The provision of cooking/kitchen facilities is not permitted within this area.

Reason: To ensure consistency with the terms of this consent.

[illegible]

[illegible]



# place design group.

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92 Addison Road, Manly

Variation to Clause 4.4 Floor  
Space Ratio

Prepared for Angela Holm and Robert  
Chapman

December 2020

## Introduction

This Clause 4.6 variation request has been prepared by Place Design Group on behalf of Angela Holm and Robert Chapman in relation to the development application for 92 Addison Road, Manly (the site). This request seeks to vary the floor space ratio prescribed for the site under Clause 4.4 of the Manly Local Environment Plan 2013 (MLEP 2013).

Clause 4.4 of the MLEP 2013 specifies the following:

*The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

FSR is defined by the MLEP 2013 as follows:

*floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area*

The relevant FSR Map nominates an FSR of 0.6:1 for the site. When measured in accordance with the MLEP 2013 definition, the current dwelling has an FSR of 0.73:1 and the proposal seeks consent for an FSR of 0.79:1. This equates to an additional 19 sqm of total Gross Floor Area (GFA).

Table 1 provides a numeric overview of the noncompliance.

Table 1. Development Standard			
Growth Centre SEPP Clause	LEP Development Standard	Proposed Development Non- Compliance	Percentage of Variation
Clause 4.4 Minimum Lot Size	0.6: 1	0.19:1	31.67%

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of MLEP 2013 and the FSR Development Standard. The following sections of the report provide an assessment of the request to vary the Development Standard relating to the FSR in accordance with Clause 4.6 of SEPP. Consideration has been given to the following matters within this assessment:

- Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and
- Relevant planning principles and judgements issued by the Land and Environment Court.

## Exception to Development Standards

Clause 4.6 of the MLEP 2013 includes provisions that allow for exceptions to Development Standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain Development Standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a Development Standard, Clause 4.6(3) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

*Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. The concurrence of the secretary has been assumed in this instance. The proposed non-compliance in FSR has been assessed against the objectives of the zone and Development Standard in **Section 3**.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the MLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment in **Section 3** and **Section 4**.

## Clause 4.6 (3a) Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe V Pittwater* [2007] NSW LEC 827 a five part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five ways are (**emphasis added**):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary.

### The objective of the standard are achieved notwithstanding noncompliance with the standard

Consideration (1) which requires a demonstration that the objectives of the Floor Space Ratio can be achieved notwithstanding noncompliance is relevant in this case. The compliance of the proposed development with the objectives of the FSR standard in Clause 4.4 of the MLEP 2013 is demonstrated in **Table 2** below.

Table 2: FSR Objectives		
Objective	Comment	Objective Achieved
To ensure the bulk and scale of development is consistent with the existing and desired streetscape character	The proposed works will not alter the external appearance of the building from the streetscape and will maintain a bulk and scale which is consistent with the existing and desired streetscape character.	✓
To control building density and bulk in relation to a site area to ensure that development does not obscure important	The proposed alterations to the building will not result in any intensity of use and will not result in any increase in scale or bulk.	✓

Table 2: FSR Objectives		
Objective	Comment	Objective Achieved
landscape and townscape features		
To maintain an appropriate visual relationship between new development and the existing character and landscape of the area	The proposed alterations to the existing dwelling house will not negatively impact the visual relationship between the building and the existing character of the area as it will not be visible to the streetscape.	✓
To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain	The proposed alterations to the existing dwelling will not have any external environmental impacts or affect the use of adjoining land.	✓
To provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres	N/A	✓



## Clause 4.6 (3b) Sufficient Environmental Planning Ground to justify contravening the Development Standard

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. This section demonstrates that the impacts of the variation will be consistent with the external site impacts that may be reasonably expected by a complying development about the following:

- The proposed development noncompliance with FSR will not result in a significant intensification of the use;
- The proposed alteration will not impact the dwelling's consistency with established setbacks or bulk and scale as all alterations occur within the existing building envelope;
- Despite the non-compliance in FSR the proposed development will provide a high level of amenity to surrounding properties, with no changes to overshadowing proposed;
- It will not impact on the heritage conservation of the area;
- The proposed development is in keeping with the desired future character of the area.

## Clause 4.6 (4a)(ii) Public Interest

Clause 4.6(4a)(ii) requires that the consent authority consider the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Despite the technical departure from the relevant FSR standard the proposed development remains consistent with the objectives of Clause 4.4 of the MLEP 2013 and therefore it is demonstrated that strict compliance with the FSR standard in this instance is unreasonable and unnecessary. Further, it is considered that the proposal will remain consistent with the objectives of the R1 zone as summarised in **Table 3** below

Table 3. Objectives of R1 General Residential	
Objectives	Compliance with Objective
To provide for the housing needs of the community.	The proposed alterations will increase the amenity of the existing dwelling which provides for the housing needs of the community.
To provide for a variety of housing types and densities.	The proposed alterations will not alter the type of housing already provided on site.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable.

## Clause 4.6(5) Grounds for Consideration

In deciding whether to grant concurrence, subclause 4.6(5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal has been assessed against the relative criteria below:

Would non-compliance raise any matter of significance for State or regional planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would not result in any new precedent for the assessment of other development proposals.

Is there a public benefit of maintaining the development standard?

In this instance, there is not a public benefit in maintaining the development standard. The proposed increase in FSR will result in an increase in amenity for the residents of the dwelling while resulting in no negative impacts on the public domain.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered within the assessment of the Clause 4.6 Request.

## Conclusion

It is requested that Council supports the proposed variation to Clause 4.4 FSR for the following reasons:

- Compliance with the Development Standard is unreasonable and unnecessary as the proposed increase in FSR will not be seen from the streetscape;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The proposed FSR increase will not result in an unreasonable environmental impact; and
- There is no public benefit in maintaining the strict compliance with the Development Standard.

Overall, it is considered that the proposed variation is considered appropriate and can be supported under the provisions of Clause 4.6 of MLEP 2013.

**ITEM 3.2****DA2020/1058 - 23 PARKVIEW ROAD, FAIRLIGHT -  
ALTERATIONS AND ADDITIONS TO AN EXISTING SEMI-  
DETACHED DWELLING****REPORTING MANAGER****TRIM FILE REF** 2021/163221**ATTACHMENTS**  
**1** Assessment Report  
**2** Site Plan & Elevations  
**3** Clause 4.6**PURPOSE**

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to DA2020/1058 for Alterations and additions to an existing semi-detached dwelling on land at Lot A DP 443750, 23 Parkview Road, Fairlight, subject to the conditions outlined in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1058
<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot A DP 443750, 23 Parkview Road FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to an existing semi-detached dwelling
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Bree Annie Higgins Kyle Malcolm Glasby
<b>Applicant:</b>	Kyle Malcolm Glasby
<b>Application Lodged:</b>	01/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	28/09/2020 to 12/10/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 25.2%%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 850,000.00

### PROPOSED DEVELOPMENT IN DETAIL

The subject development application seeks alterations and additions to a dwelling house. The specifics of the proposal are as follows:

- An extension of the ground floor. This element will have a 940mm lower floor level than existing areas at the rear of the dwelling) and will include a new entry/foyer and open plan living area that includes a kitchen, dining and living area.
- The layout within the remainder of the existing ground floor is to be altered to provide three bedrooms, a bathroom/laundry and home library. The existing side entrance is to be replaced with an internal stairway to the proposed first floor.

- A new first floor is to be added above the existing dwelling. This element of the addition will include a new master bedroom, Walk In Robe (WIR), ensuite and sitting area. A small balcony is proposed on the rear elevation.
- A new car parking area is to be located within the front setback. A new driveway layback and crossover is proposed as part of this feature.
- Landscaping works are proposed around the site, including a new stepping stone pathway to the new building entrance.

Demolition works to facilitate the above includes demolition of the rear of the dwelling and the removal of paved areas within the front, side and rear setback areas.

No tree removal is proposed.

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot A DP 443750 , 23 Parkview Road FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	The subject site is identified as 23 Parkview Road, Fairlight

(Lot A, DP443750), and is located on the western side of Parkview Road.

The site is an irregularly-shaped allotment with a frontage of 7.48m along Parkview Road, a maximum depth of 37.015m and due to a step on the northern boundary, a rear boundary width of 6.635m. The site has a surveyed area of 268.7m<sup>2</sup>.

The site is located within the R1 General Residential zone under Manly Local Environmental Plan 2013. Development on the site includes a semi-detached single-storey dwelling house. The front, rear and southern side setbacks all contain significant paved areas with landscape planters.

The site is slightly sloped, with a front-to-rear fall of approximately 1.2 metres.

The site does not contain any significant trees or vegetation. Aside from being mapped as containing class 5 Acid Sulphate Soils, the site is not identified as being subject to any notable affectations. The site does not contain a heritage item, is not within a heritage conservation area, nor is it in close proximity to a mapped heritage item.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential development of varying typologies and densities. Development along Parkview Road within the vicinity of the subject site consists predominantly of semi-detached dwellings. Development adjoining both sides of the subject site (i.e. 21 and 25 Parkview Road) consist of semi-attached dwellings, while the site adjoining the rear boundary (2 Griffiths Street) contains a detached dwelling house.

Map:



#### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 50(1A) of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information / amended plans were requested in relation to building height.</p> <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on "Notification & Submissions Received" in this report.



Section 4.15 Matters for Consideration'	Comments
with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/09/2020 to 12/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Michael Drewin Patten	1 Cecil Street FAIRLIGHT NSW 2094

One (1) submission was received during the notification. The issues raised in the submissions have been summarised and are addressed as follows:

- *Loss of privacy to adjoining property at 1 Cecil Street*

Comment: The amended plans have set the upper level deck at a substantial distance from the boundary and private open space area of No.1 Cecil, which adjoins to the north-west. This will improve the privacy of this dwelling, to an acceptable degree.

- *Noise impact to No.1 Cecil Street*

Comment: As discussed, the amendments made to the proposal will further improve the privacy (and acoustic privacy) of adjoining properties.

- *A condition should be applied for a screen hedge 3m in height along the boundary with No.1 Cecil Street.*

Comment: Based on the amendments made to the proposal, this condition is not considered necessary.

### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

#### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

##### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

##### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A385075\_03, dated 12 August 2020). As the proposal is for alterations and additions, an ABSA certificate is not required. A review of the certificate indicates that all commitments indicated on the certificate have been satisfied.

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### **SEPP (Infrastructure) 2007**

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### **Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:				N/A
Rural Subdivision:				N/A
Height of Buildings:	8.5m	7.135m	N/A	Yes
Special height provisions				N/A
Floor Space Ratio	FSR: 0.6:1 (i.e. 161.22m <sup>2</sup> )	FSR: 0.751:1 (i.e. 201.8m <sup>2</sup> )	25.2%	No
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises			N/A

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	
5.8 Conversion of fire alarms	N/A
6.1 Acid sulfate soils	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	N/A
6.12 Essential services	Yes
6.15 Tourist and visitor accommodation	N/A

#### Detailed Assessment

##### 4.3 Height of buildings

Maximum permitted height: 8.4 metres

Maximum proposed height: 7.745 metres (calculated from proposed ridge RL61.835 to extrapolated ground RL 54.09)

##### 4.4 Floor space ratio

Maximum permitted FSR: 0.6:1

Proposed gross floor area: 202.3m<sup>2</sup>

Proposed FSR: 0.753:1

##### 6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

The development proposes to excavate the site to approximately 270mm below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment is not required.

#### Mainly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 268.7m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and	Density: 1 dwelling	One (unchanged)		Yes

Dwelling Size	Dwelling Size: 90sqm	201.8m <sup>2</sup>		Yes
4.1.2.1 Wall Height	N: N/A (Internal wall)	N/A		N/A
	S: 6.6m (based on gradient 1:50)	3.7m	N/A	Yes
	E: N/A (Unchanged)	N/A		N/A
	W: 6.5m (based on gradient 0)	3.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	200mm	N/A	Yes
	Parapet Height: 0.6m	200mm	N/A	Yes
	Pitch: maximum 35 degrees	N/A - Flat/parapet roof	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A - Unchanged	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northern elevation: N/A (Internal/zero setback wall) Southern elevation: 1.12m/2.28m	Northern elevation: N/A Southern elevation: 1m (ground floor)	66.6%	No
	Windows: 3m	1-2.6m	66.6	No
	N/A - Not a corner allotment	N/A		N/A
4.1.4.4 Rear Setbacks	8m	3m	62.5%	No
4.1.4.5 Foreshore Building Lines and Foreshore Area	N/A - Not a foreshore site	N/A		N/A
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	N/A		N/A
	8m (rear boundary)	N/A		N/A
4.1.4.7 Setback for development of certain land at Boronia Lane and Rignold Street, Seaforth	Mapped building line	N/A		N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	32.9%	40.2%	No
	Open space above ground 25% of total open space	N/A		N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	29.8%	14.8%	No
	1 native trees	1 trees (conditioned)		Yes
4.1.5.3 Private Open Space	18sqm per dwelling	20sqm		Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Max. 3.514m width (47% of frontage)		Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground			N/A



	1m curtilage/1.5m water side/rear setback			N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	N/A	N/A
3.3.3 Footpath Tree Planting	N/A	N/A
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	N/A	N/A
3.4.4 Other Nuisance (Odour, Fumes etc.)	N/A	N/A
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	N/A	N/A
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	N/A	N/A
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	N/A	N/A
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	N/A	N/A
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

#### Detailed Assessment

#### **3.4.2 Privacy and Security**

The proposal will comply with the development controls and objectives relating to visual privacy. In response to the objecting submission, the development will not have significant nor unreasonable impacts on surrounding sites, with regard to the following points:

- The existing side-facing entry point will be reoriented to address the primary boundary.
- The floor level of the proposed ground floor additions will be lowered to RL 54.1 (i.e. existing ground level); at this level, 1.8 metre high boundary fencing will provide adequate screening of adjoining sites from these areas.
- With the exception of the stairway window (which is at the front of the building and is therefore acceptable), high-level windows with 1.5m sill heights are otherwise proposed along the southern elevation of the first floor additions.
- The 1.18m-wide balcony on the first floor will be associated with a bedroom and therefore will not form a gathering point that will create frequent overlooking opportunities for adjoining sites. At its closest point, the balcony will be 11.3 metres from the objector's property and 3.4 metres from the 'step' which forms the boundary with the adjoining site to the north.

With regard to the objector's site, there is sufficient spatial separation to prevent significant overlooking issues. Three-metre high landscape screening as sought by the objector is not supported, as it is unlikely to change visual privacy outcomes and will worsen solar access, both for the subject site and 21 Parkview Road after 12:00pm on June 21.

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### **Proposed setbacks:**

Front setback: 4.53m (existing; unchanged)

North side setback: 0m (existing; unchanged)

South side setback:

- Ground floor: 1m (minimum 1.1m required with regard to control (a))
- First floor: 2.6m (minimum 2.56m required with regard to control (a))

Rear setback: 3m

Discussion of side setback variation:

**Note:** This variation only affects the ground floor; the first floor complies and will not be discussed further.

A 100mm variation is proposed on the southern side of the ground floor, which will also include habitable windows that address the southern side boundary. The variation is relatively small (i.e. 9%), and due to the retention of the existing the average side setback of the southern elevation is considerably greater than the minimum requirement.

Despite the variation, access to the entirety of the site is also obtainable via the southern side setback. The removal of existing paving within the side setback will also increase landscaped and deep soil area across the site. Despite the placement of the side-facing windows, they are located at ground level, therefore both landscaping and 1.8 metre high boundary fences will provide adequate screening and the setback will not adversely affect visual privacy.

With regard to the above, the objectives of the controls are satisfied, and the variation is supportable on merit.

Discussion of rear setback variation:

**Note:** This variation only affects the ground floor; the first floor complies and will not be discussed further.

The proposed three metre rear setback constitutes a five metre (i.e. a 62.5%) variation to the rear setback requirement. Despite the variation, the rear setback (which is currently almost completely paved) will be converted to landscaped area, thereby increasing landscaped and deep soil area both within this area and across the site. The proposed floor level towards the rear of the dwelling (which is approximately 1.3 metres above ground level at present) is to be located at ground level, therefore windows within this area that address the rear of the site will be adequately screened by landscaping and 1.8 metre high boundary fences. There will be no impact on views.

With regard to the above, the objectives of the controls are satisfied, and the variation is supportable on merit.

#### 4.1.5 Open Space and Landscaping

**Requirements:**

- Total open space: 55% of site area (i.e. 147.8m<sup>2</sup>)
- Landscaped area: 35% of site area (i.e. 94m<sup>2</sup>)

**Proposed:**

- Total open space: 37.6m<sup>2</sup>, or 14% of site area (inclusive of minimum dimensions)
- Landscaped area: 85.9m<sup>2</sup>, or 32% of site area.

Discussion of open space variation:

The proposed open space area will be a 110.2m<sup>2</sup>, or a 74.5% variation to the development control. The proposal will result in a 17.6m<sup>2</sup> reduction in available open space as a result of encroachment onto such areas within the front and rear setbacks by the onsite car parking space and increase to the ground floor area respectively. Further other areas that could serve as open space within the side setback area are unable to be included as they do not meet minimum dimension requirements.

Despite the significant non-compliance, the variation is considered to be acceptable. The proposal seeks to remove paved areas from the rear setback, which will enable the entire rear setback area to provide sufficiently-sized open space within a landscaped setting. Further, the design of the additions will both situate the ground floor additions at ground level in addition to providing direct access from living areas to the open space area via new doors on the rear elevation (as opposed to the current layout, which situates living areas within the centre of the dwelling and which does not provide any direct access to open space areas). As such, the proposal will significantly improve the usability and functionality of the rear open space area, by enabling it to form an extension of internal living areas. Further, the proposed locations of the open space areas will maximise solar access to such areas.

With regard to the above and noting that the objectives of the control are satisfied, the variation is supportable on merit.

Discussion of landscaped area variation:

The proposed landscaped area of the site will be an 8.1m<sup>2</sup>, or an 8.6% variation to the development control. The amount of landscaped area being provided is however a significant increase from the approximately 27.7m<sup>2</sup> of landscaped area that is currently on the site, as the car parking and ground floor additions will be offset by the removal of significant paved areas within the front, rear and side setback areas. The proposed landscaped areas will both significantly increase pervious area and the dimensions of landscaped/deep soil area to facilitate the planting of larger vegetation. As such, the objectives of the controls will be satisfied and the non-compliance is supportable on merit.

**Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles**

One (1) off-street car parking space is proposed, which is a one (i.e. 50%) variation to the development control. The site does not however have any onsite parking at present, therefore the proposal will increase the number of off-street spaces by one (1) space. The location of the existing dwelling house is such that additional off-street parking is unable to be provided without further reducing landscaped space and adversely affecting streetscape character. Council's development engineer has no objection to the proposed parking arrangement. The proposed onsite car parking provisions are therefore considered to be satisfactory.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

**POLICY CONTROLS****Northern Beaches Section 7.12 Contributions Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$8,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$850,000.

## CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.75:1
Percentage variation to requirement:	25.2%

### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

### Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*



*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*



Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part, that the development is:

- consistent with the objectives of the R1 General Residential zone;
- consistent with the objectives of the standard, by siting the addition in a manner that preserves the single-storey character of the existing dwelling and other similar dwellings in the street;
- designed in manner that minimises its impact on adjoining dwellings with regard to overshadowing, privacy and overall visual impact; and
- consistent with the overall character of Parkview Road and surrounding the streets by the presentation of new works that are conspicuous by their bulk and scale, in contrast with existing forms of development in the area.

The reasons presented in the written request are considered valid and worthy of support. The type of buildings area in which the site is located is mixed in character, however a predominant form is considered to be single-storey dwelling houses, both attached and detached. The works to the existing detached dwelling have been set back from the both the existing rear and front setbacks of the dwelling, to reduce the overall built form. The upper addition also adopts a contemporary form, which

preserves the early 20th century style of the existing dwelling, and allows the existing single storey element of the dwelling to predominate.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: As stated previously, the predominant form of the streetscape is single-storey detached and attached dwellings. The proposed works have been designed in a manner that preserves this character.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: There are no important landscape features or landmarks that will be effected by the proposed works.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: The proposed 1<sup>st</sup> floor additions are in a contemporary style, which contrasts with the style of the existing dwelling, which is early 20th century. These works have been designed in a manner that does not dominate the existing dwelling and allows this existing character to be retained.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The proposal will not result in an adverse amenity impact on any adjoining dwelling or the adjoining public domain.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment: Not relevant to the proposed development.

### **Zone objectives**

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community*

Comment: The proposal, being residential, will satisfy this objective.

- *To provide for a variety of housing types and densities*

Comment: The existing range of housing choices in the area will not be effected by the proposal.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: Not relevant to the proposed development.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to

the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/1058 for Alterations and additions to an existing semi-detached dwelling on land at Lot A DP 443750, 23 Parkview Road, FAIRLIGHT, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA3	12 December 2020	Plan A
DA4	12 December 2020	Plan A
DA5	12 December 2020	Plan A
DA6	12 December 2020	Plan A
DA7	12 December 2020	Plan A
DA8	12 December 2020	Plan A
DA9	12 December 2020	Plan A
DA10	12 December 2020	Plan A

Engineering Plans		
Drawing No.	Dated	Prepared By
20055 SW-1	4 August 2020	Michal Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
BASIX Certificate A385075_03	12 August 2020	Plan A



b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such

- damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.



- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa

- area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$850,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### 5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

#### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

7. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

8. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

9. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

10. **Waste Management Plan**

A Waste Management Plan is to be provided.

Details are to be submitted to the Accredited Certifier prior to the issue of any Construction Certificate.

Reason: To ensure that the disposal and processing of building waste is adequately managed.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

11. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

12. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

13. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

14. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.










#### **CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

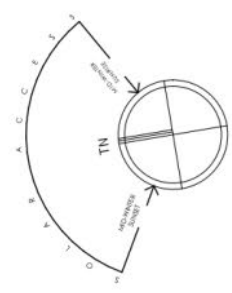
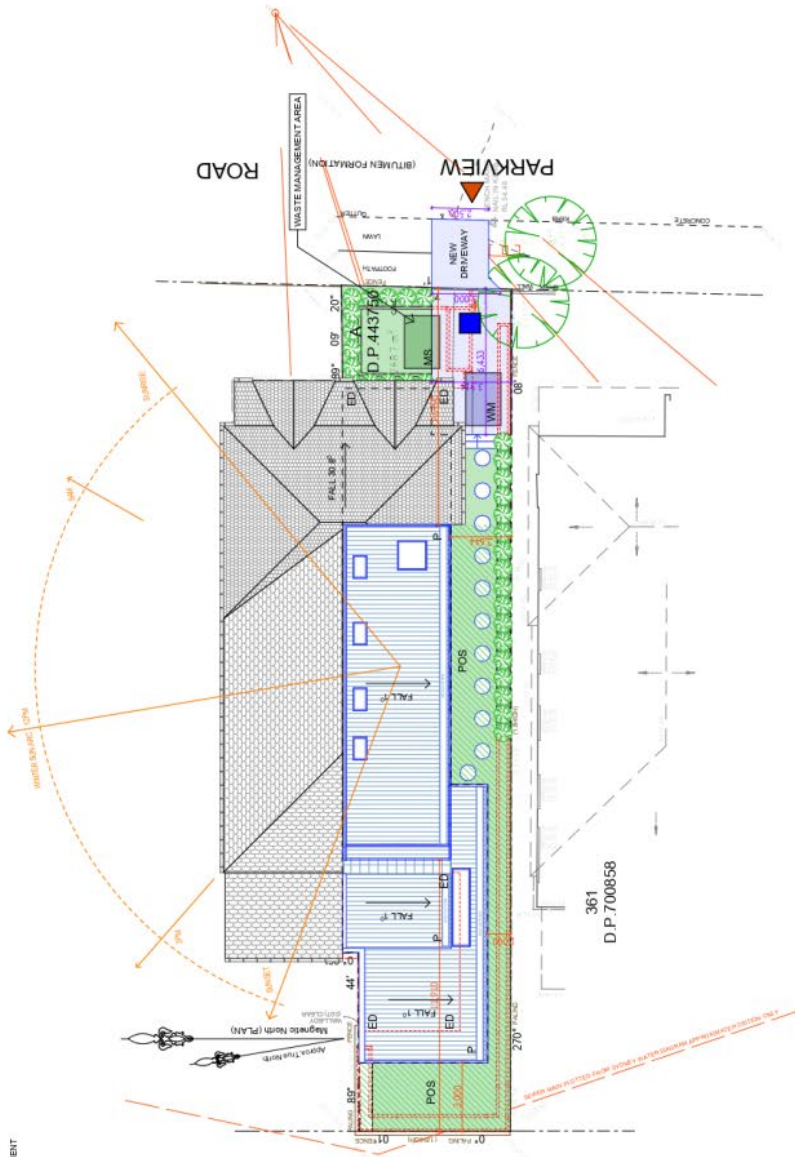
15. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.



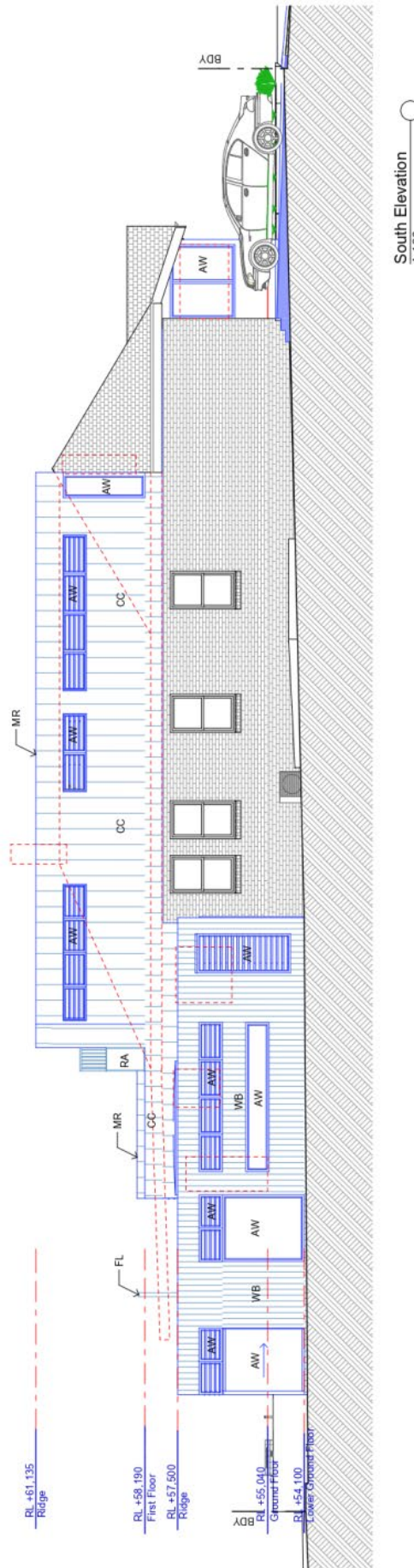
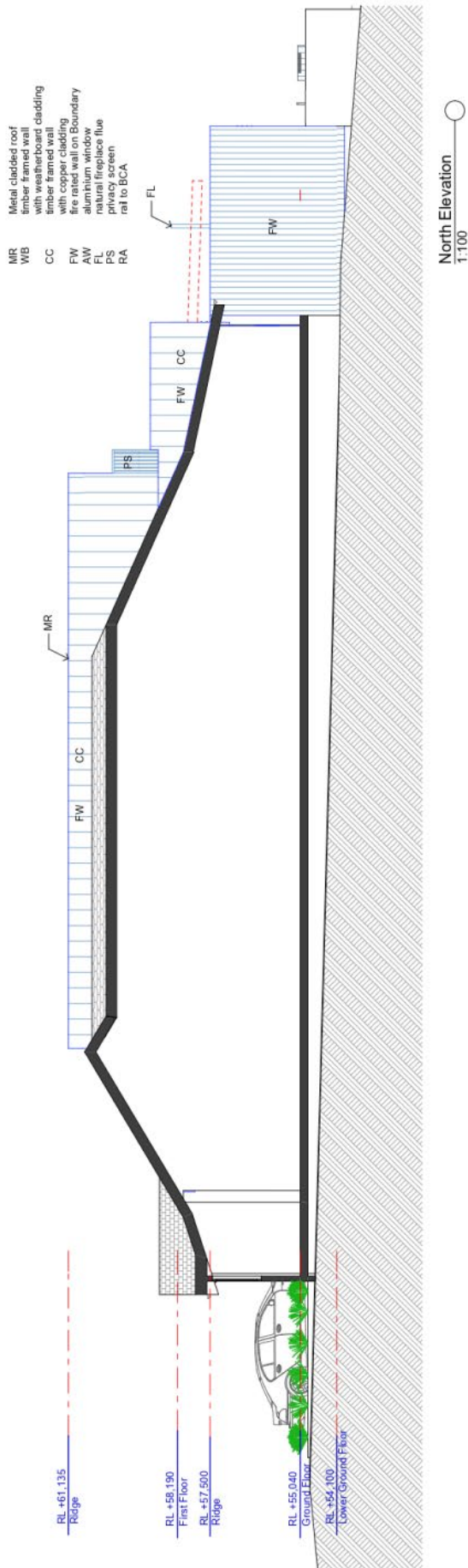
LEGEND	
	PROPOSED
	PRIVATE OPEN SPACE (EXISTING)
	EXISTING DWELLING
	MATERIAL STOCKPILE
	EXISTING LEVELS
	CAR ENTRY POINT
	HARDSTAND AREA
	BOUNDARY
	WASTE MANAGEMENT



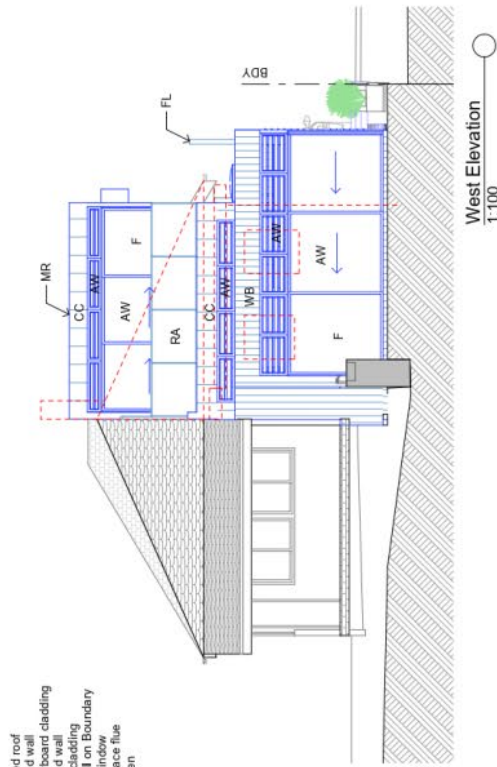
Site Analysis Plan  
1:200

<div><div>PA</div><div>PLAN A</div><div>Architect</div></div>	<div><div><div>DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE</div><div>FIGURED DIMENSIONS TAKE PRECEDENCE</div><div>The builder shall check and verify all dimensions on site.</div><div>Architect: Do not scale the drawings.</div><div>Drawings shall not be used for construction purposes until issued by the Architect for construction.</div></div></div>	<div>REVDATEDESCRIPTION</div>		<div><div>PLAN A</div><div>info@plansA.com.au</div></div>	<div><div>PROJECT: 23 Parkview Rd, Fairlight, 2084, NSW</div><div>Additions &amp; Alterations</div><div>LOT A in DP 443750 - 268 7m2</div><div>CLIENT: Private</div></div>	<div><div><div><div><div></div><div>Blue</div></div><div><div></div><div>Red</div></div><div><div></div><div>Green</div></div><div><div></div><div>Black</div></div></div><div><div>Project Name</div><div>Issue</div><div>Scale</div><div>Project Number</div></div></div></div>	SYN: DA	
		DATE: 12/12/20						
		STAGE: DA						
		DRAWING NO: DA3						
		SCALE: 1:200@A3						
PROJECT NUMBER: 2006								
DRAWING/DESIGN: PB / MP								
ISSUE:								

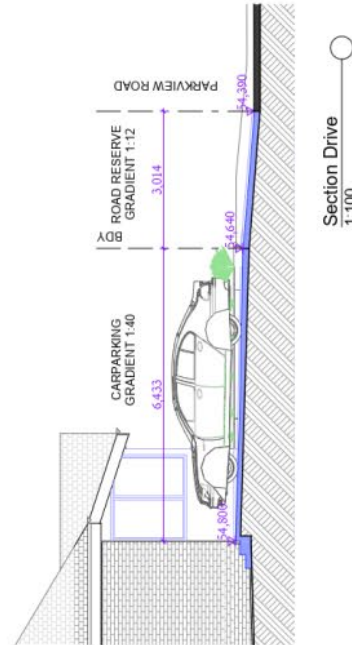




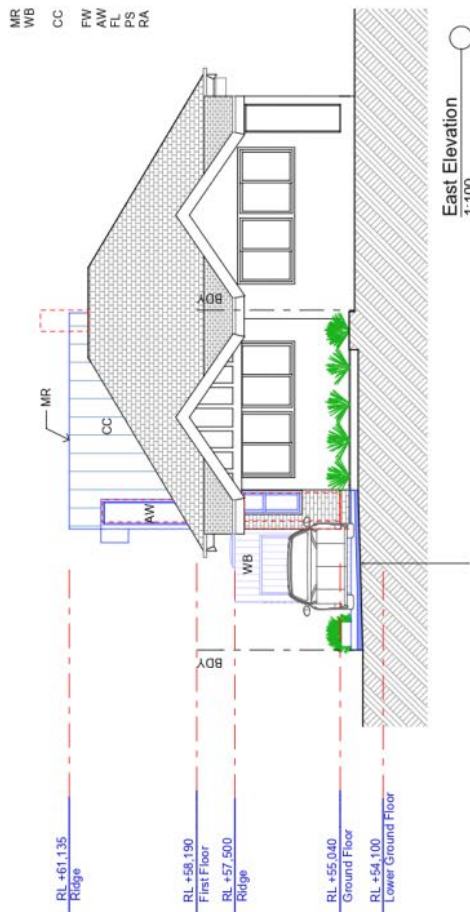
<div><div>PA</div></div>	DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE (FIGURED DIMENSIONS TAKE PRECEDENCE) The builder must check and verify all dimensions All dimensions are given in millimetres unless otherwise indicated. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.			<div>Plan A</div> <div>info@plansA.com.au</div>			<div>PROJECT: 23 Parkway Rd, Fairlight, 2084, NSW Additions &amp; Alterations LOT A in DP 443750 - 268 7m2</div> <div>CLIENT: Private</div>			<div><div>SYMB: DA</div><div>DATE: 12/12/20</div><div>STAGE: DA</div><div>DRAWN/DESIGNED: PB / MP</div><div>ISSUE: DA7</div></div>			<div><div>SCALE: 1:100@A3</div><div>PROJECT NUMBER: 2006</div><div>ISSUE: DA7</div></div>		
REV		DATE		DESCRIPTION											



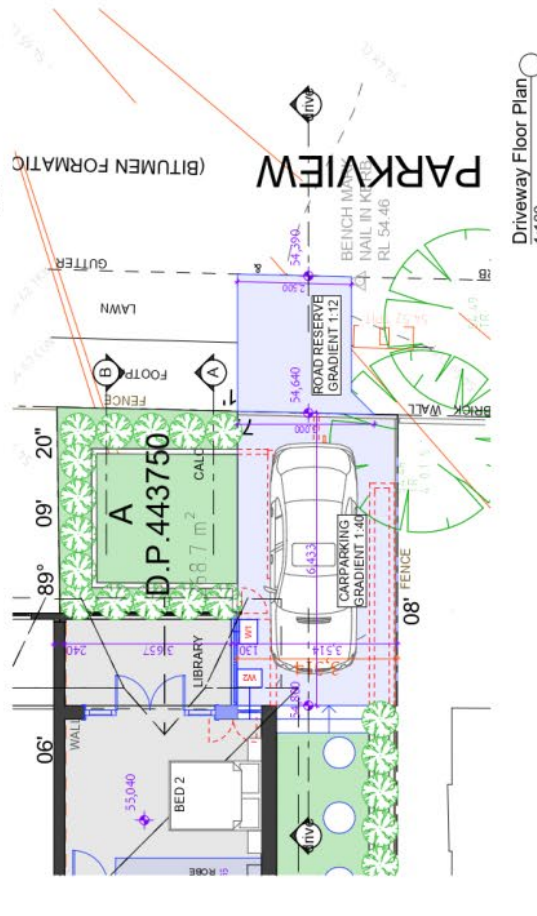
West Elevation  
1:100



Section Drive  
1:100



East Elevation  
1:100



Driveway Floor Plan  
1:100

<b>Plan A</b> info@plansA.com.au		PROJECT: 23 Parkway Rd, Fairlight, 2084, NSW Additions & Alterations LOT A in DP 443750 - 268 7m2		CLIENT: Private		DRAWING NO: DA8	
		SYMB: DA DATE: 12/12/20 STAGE: DA DRAWN/DESIGNED: PB / MP ISSUE:		SCALE: 1:100@A3 PROJECT NUMBER: 2006		PROJECT NUMBER: 2006	

REV	DATE	DESCRIPTION



23 Parkview Road, Fairlight

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**APPENDIX B – CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO****SUBMISSION PURSUANT TO CLAUSE 4.6 OF THE MANLY LOCAL  
ENVIRONMENTAL PLAN 2013****VARIATION OF DEVELOPMENT STANDARD REGARDING THE MAXIMUM  
FLOOR SPACE RATIO PRESCRIBED BY CLAUSE 4.4 OF THE MANLY  
LOCAL ENVIRONMENTAL PLAN 2013**

**For:** Alterations/Additions to existing Semi-Detached Dwellings  
**At:** 23 Parkview Road, Fairlight  
**Applicant:** Plan A

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**Introduction**

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of alterations and additions to an existing semi-detached dwelling at **23 Parkview Road, Fairlight**.

The specified maximum floor space ratio under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.6:1. The development proposes a departure from this numerical standard and proposes a maximum floor space of 197.47m<sup>2</sup> or 0.73:1.

This floor space ratio requirement is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

**PURPOSE OF CLAUSE 4.6**

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

**OBJECTIVES OF CLAUSE 4.6**

The objectives of Clause 4.6 are as follows: -

- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*



**ONUS ON APPLICANT**

Clause 4.6(3) provides that:-

*Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:-*

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

**JUSTIFICATION OF PROPOSED VARIANCE**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:-

*Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).*

*The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

**Precondition 1 - Consistency with zone objectives**

The land is located in the R1 General Residential Zone. The objectives of the R1 zone are:-

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

23 Parkview Road, Fairlight

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**Comments**

The development proposal includes the construction of alterations and additions to an existing semi-detached dwelling. The proposal is considered to meet the objectives of the R1 zone for the following reasons:

- The proposal provides for additions/alterations to an existing semi-detached detached dwelling to meet the needs of the owners.
- The additions/alterations retain the semi-detached dwelling and does not result in unreasonable bulk or scale when viewed from the street or the adjoining property.

**Precondition 2 - Consistency with the objectives of the standard**

The objectives of Clause 4.4 are articulated at Clause 4.4(1):-

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

**Comments**

The proposal provides for additions to the existing semi- dwelling. The proposed additions are located at the rear of the dwelling and designed to retain the single storey façade. As a result there is minimal impact on the streetscape. Notwithstanding, the existing streetscape provides for large variety of building forms, including single dwellings, semi-detached dwellings and large residential flat buildings. The proposal achieves compliance with this objective.

- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

**Comments**

The proposed additions are located at the rear of the existing dwelling and do not obstruct/obscure any important landscape or townscape features. The proposal achieves compliance with this objective.

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

**Comments**

The existing surrounding development comprises a variety of building forms and heights. The location of the additions at the rear of the existing dwelling ensures the existing single storey presentation to the street is retained. The proposal provides for appropriate setbacks to the southern side boundary, with the new upper level setback 2.644m to ensure visual separation and minimise bulk and scale as viewed from the adjoining property.

23 Parkview Road, Fairlight

The proposal improves landscaping on site by removing existing paving and providing for 87.52m<sup>2</sup> of soft landscaping (an increase of 57m<sup>2</sup> on the existing development). This enables additional shrubs and vegetation to improve amenity to the subject and adjoining properties.

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

#### Comments

The proposal will not adversely impact on the enjoyment of the adjoining land or the public domain. The proposed additions are designed and orientated to ensure there is no direct overlooking of the adjoining southern property. The proposal incorporates minimal windows on the side elevations, with only highlight windows on the first-floor side elevations. Shadow diagrams depicted with the application indicate that the adjoining southern property will continue to receive at least 3 hours solar access to at least 50% of its private open space on the winter solstice. There are no adverse impacts on the use/enjoyment of the public domain. The proposal complies with this objective.

- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

#### Comments

This objective does not apply.

#### **Precondition 3 - To a consider written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard given the limited site area and the existing surrounding development which includes a number of large dwellings and residential flat buildings.

The additions are located at the rear of the existing dwelling and retains the single storey front facade. The proposal does not result in any unreasonable impacts on the adjoining properties or the character of locality as depicted and detailed in this submission and the Statement of Environmental Effects.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.



**Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

The primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the floor space ratio development standard.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

23 Parkview Road, Fairlight

Accordingly in regards to the proposed development at 23 Parkview Road, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- The proposal does not result in any loss of privacy nor an unreasonable loss of solar access to the adjoining properties.
- The existing surrounding development comprises a mixture of single detached dwellings, semi-detached dwellings and large residential flat buildings. The resultant development is compatible with the existing surrounding development.

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the numerical variation to the floor space ratio standard.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variance' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**Comment:** It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b)

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

**Comment:** Not applicable.

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23 Parkview Road, Fairlight

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The development standard is applicable to and appropriate to the zone.

## CONCLUSION

The development proposes a departure from the maximum floor space ratio. The proposal produces an appropriate development outcome. The variation to the floor space ratio at this location is considered appropriate given the existing surrounding development including large dwellings and residential flat buildings. Furthermore, the additions satisfy the zone objectives and the objectives of the development standard.

As there is no unreasonable impact on adjoining properties or the public domain arising from the variation to the floor space ratio development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

**Natalie Nolan**  
**Nolan Planning Consultants**

**ITEM 3.3**

**MOD2020/0586 - 3 MULGOWRIE CRESCENT, BALGOWLAH  
HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT  
10.2013.45.1 GRANTED FOR ALTERATIONS AND ADDITIONS  
TO AN EXISTING DWELLING**

**REPORTING MANAGER**

**TRIM FILE REF** 2021/163355

**ATTACHMENTS**

- 1 Assessment Report**
- 2 Roof Plan & Elevations (no site plan)**

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Mod2020/0586 for Modification of Development Consent 10.2013.45.1 granted for alterations and additions to an existing dwelling including second floor addition, front and rear additions to the ground floor and first floor, double carport, driveway, rear deck, rear terraces, above ground swimming pool, pavilion with bathroom and kitchen facilities and landscaping, on land at Lot 8 Sec 58 DP 758044, 3 Mulgowrie Crescent, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0586
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 8 DP 758044, 3 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent 10.2013.45.1 granted for alterations and additions to an existing dwelling including second floor addition, front and rear additions to the ground floor and first floor, double carport, driveway, rear deck, rear terraces, above ground swimming pool, pavilion with bathroom and kitchen facilities and landscaping
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Sally Myeela Beeton
<b>Applicant:</b>	Sally Myeela Beeton
<b>Application Lodged:</b>	10/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	19/11/2020 to 03/12/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 24.7% 4.4 Floor space ratio: 2.4%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application proposes to modify the approved alterations and additions to the existing dwelling on the site.

The original consent (DA0045/2013) was issued by the former Manly Council's Development Assessment Unit (DAU) on 4 September 2013. The current modification application has been made under Section 4.55(2) of the EPA Act. As such, the application is referred back to the Development



Determination Panel for determination.

The proposed modification includes a minor increase to the previously approved non-compliant floor space ratio development standard, with a total variation of 2.4%. Despite the application being a modification made under Section 4.55, an assessment of the proposed variation has been made against the relevant LEP objectives and tests contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The modification includes a minor reduction to the approved building height non-compliance.

One submission was received by way of objection in response to the notification/advertising of the application, generally relating to the potential view impacts of the development.

A minor amendment to the modification was made by the applicant during the assessment process. These amendments are discussed in further detail under the Detailed Description of Development, but generally consist of a reduction to the first floor roof ridge height. Given the minor nature of the amendments and the benefit considered to be provided to the adjoining property, re-notification was not necessary.

No further assessment issues are raised and the modification is recommended for approval.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for modifications as follows:

### **Lower ground floor**

- Minor internal alterations to provide new Pantry and reconfigured Laundry
- Reconfiguration of stair between Living and Media
- Lower FFL of Rumpus by 370mm, replace juliet balcony with window seat
- Changes to windows and doors
- Replace horizontal awning roof with adjustable awning

### **Ground floor**

- New subfloor storage to carport
- New spiral staircase in approved stair location
- Changes to doors and windows

### **First floor**

- Deletion of two-storey void over entry

### **External**

- Replace approved parapet roofs over ground floor Sunroom, Rumpus and first floor Bedroom with hipped roofs
- Hipped roof to carport
- 1.8m front fence
- Delete western swimming pool balance trough, replace spa with swimout seat & steps

The applicant has submitted an amendment to the proposal in order to lower the ridge height of the proposed first floor hipped roof from RL88.64 to RL88.5.

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.10 Fencing

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 8 DP 758044 , 3 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the south-western side of Mulgowrie Crescent.</p> <p>The site is regular in shape with a frontage of 21.3m along Mulgowrie Crescent and a depth of 41.19m. The site has a surveyed area of 801m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling.</p> <p>The site slopes 8.5m from front (north-east) to rear (south-west).</p>

The site contains existing vegetation and one significant tree within the rear yard. The adjoining public reserve to the north-west of the subject site is densely vegetated.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential development. A public reserve (RE1) adjoins the site directly to the north-west.

Map:



**SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA0045/2013 - Part 1 - Alterations and additions to an existing dwelling including second floor addition, front and rear additions to the ground floor and first floor, double carport, driveway, rear deck, rear terraces, above ground swimming pool, pavilion with bathroom and kitchen facilities and landscaping - Approved by DAU 4 September 2013.

DA0045/2013 - Part 2 - Section 96 to modify approved Alterations and additions to an existing dwelling including second floor addition, front and rear additions to the ground floor and first floor, double carport, driveway, rear deck, rear terraces, above ground swimming pool, pavilion with bathroom and kitchen facilities and landscaping – involving ground and first floor extensions, awning over ground floor terrace, relocation of outbuilding, relocation of pool and associated decks - Approved by DAU 30 September 2015.

MOD2018/0549 - Modification of Development Consent DA45/2013 granted for alterations and additions to an existing dwelling Status - Approved 17 April 2019.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Reports for DA0045/2013 and subsequent modifications (DA0045/2013 - Part 2 and MOD2018/059), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0045/2013 and subsequent modifications (DA0045/2013 - Part 2 and MOD2018/059) for the following reasons:</p> <p><i>"(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</i></p> <p><i>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and"</i></p> <p><u>Comment:</u></p> <p>The proposed changes maintain the single residential use and do not alter the intent of the lot</p>



Section 4.55 (2) - Other Modifications	Comments
	<p>to be developed. The resulting built form and general appearance of the development is materially the same as originally approved. These modifications are to approved structures within the approved development footprint, and are considered to result in an overall reduction to the bulk of the development.</p> <p>The modified development is not considered to result in any significant departures from the previous approval in relation to visual and amenity impacts.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0045/2013 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require, or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the</p>

Section 4.15 'Matters for Consideration'	Comments
	submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

A revised Bushfire Report has been submitted with the modification application. The proposed modifications are generally minor in extent and the previously imposed conditions relating to bushfire protection remain relevant to the development.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/11/2020 to 03/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Dennis Ravi	28 Tabalum Road BALGOWLAH HEIGHTS NSW 2093

The matters raised within the submissions are addressed as follows:

- View loss impacts

Comment:

The applicant has provided amended plans lowering the overall ridge height of the development by 140mm. An assessment of the impact of the proposed modification is undertaken under Manly DCP Clause 3.4.3, and finds that on balance the proposed modifications are acceptable in relation to views.

This matter is not considered to warrant refusal of the application.

**REFERRALS**

No referrals were sent in relation to this application

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

**State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)****SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A390138 dated 3 November 2020).

**SEPP (Infrastructure) 2007**Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the

- electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.1m	10.6m	24.7%	No (as approved)
Floor Space Ratio	0.4:1 320.4m <sup>2</sup>	0.4:1 323.4m <sup>2</sup>	0.41:1 328.2m <sup>2</sup>	2.4%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.3 Height of buildings**

The proposed modification will increase the approved roof ridge height from RL88.34 to RL88.5. However, the overall building height calculated in accordance with this control is reduced from 11.1m to 10.6m as a result of the new pitched roof form.

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (320.4m <sup>2</sup> )
Proposed:	0.41:1 (328.2m <sup>2</sup> )
Percentage variation to requirement:	2.4%

##### Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**



Comment:

Compliance with the floor space ratio development standard is considered unnecessary in this case for the following reasons:

- The proposed modification results in a minor increase of 4.8m<sup>2</sup> to the approved FSR, and an overall breach of only 7.8m<sup>2</sup>.
- The additional gross floor area is achieved at the lower ground floor level, and will be generally imperceptible from the street frontage and adjoining properties.
- There is a significant reduction to bulk at the first floor level due to the deletion of the void over the dwelling entry and the replacement of the roof parapet with hipped roofs.
- The non-compliance will result in no unreasonable amenity impacts.

**There are sufficient environmental planning grounds to justify contravening the development standard,**

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The extent of the breach is minor and the modification will reduce the overall bulk of the dwelling.
- While the approved first floor void space over the dwelling entry does not contribute to gross floor area, the deletion of this element will materially reduce the visual bulk of the development as viewed from the streetscape and adjoining properties.
- The deletion of the void and roof parapet are considered to offset any impact resulting from the minor increase to FSR.

**The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.**

4.4 Floor Space Ratio

(1) The objectives of this clause are as follows—

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The proposed modifications are considered to reduce the visual bulk of the dwelling and maintain the desired character of the locality, despite the FSR breach.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The proposed modification results in a reduction to the height and scale of the approved

development.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The proposed changes to the approved dwelling will result in a reduction to bulk and amenity impacts to surrounding properties.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposed additional gross floor area will not result in any unreasonable impacts on the use or enjoyment of adjoining land.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

N/A

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal maintains the existing single dwelling use.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

### 6.9 Foreshore scenic protection area

The proposed modification relates to an approved dwelling and will not result in unreasonable impact to visual aesthetic amenity or views to and from Sydney Harbour.

### Manly Development Control Plan

Built Form Controls

There are no development controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

### 3.4.1 Sunlight Access and Overshadowing

Merit consideration

The proposed modifications to the approved roof form will result in a reduction to bulk in proximity to the southeastern boundary, and will not cause any further material overshadowing impacts.

### 3.4.2 Privacy and Security

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The modifications generally reduce glazed areas to the side boundaries and will not result in any unreasonable privacy impacts to adjoining properties

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

Comment:

The proposal provides sufficient privacy and sunlight access to the subject site and adjoining properties.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

Opportunities for passive surveillance are maintained.

Having regard to the above assessment, it is concluded that the proposed development is **consistent** with the relevant objectives of **MLEP 2013 / MDCP** and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

### 3.4.3 Maintenance of Views

Merit consideration

An inspection of No. 28 Tabalum Road was completed in order to make an assessment of the available views. The views currently available are water views of North Harbour including land-water interface at Chinamans Beach, Wyargine Point and Balmoral Beach. The affected views over the subject site are to Chinamans Beach. The available views shown in the photos below are obtained from the upper level balcony of No. 28 Tabalum Road.





Photo 1. Available views over the subject site to Chinamans Beach from No. 28 Tabalum Road. The subject site can be seen partially demolished, centre-right of the photo.





Photo 2. Available views to Chinamans Beach and Balmoral from No. 28 Tabalum Road.

It should be noted that the below assessment is based on the amended plans that reduce the first floor roof ridge from RL88.64 to the proposed RL88.5.

The modification includes the replacement of the approved parapet roof with various pitched roofs, including a new hipped roof over the first floor Master Bed which is generally above the location of the existing roof ridge visible in the above photos. The ridge level of the new hipped roof over the Master bedroom of RL88.5 is 160mm higher than the previously approved parapet height at the front of the dwelling (RL88.34). However, the gutter levels of the new hipped roof are approximately 450mm lower than the top of the approved parapet.

The changes to the roof form and the deletion of the first floor void space will improve views to the south and west of the first floor. On balance, the likely benefits to view corridors and visual bulk resulting from the reduction to the envelope at the first floor level, as indicated on the amended plans below, are considered to outweigh the potential impact of the portion of the hipped roof that extends beyond the height of approved parapet.

As such, the proposed modification is considered to be acceptable in relation to views and is supported.

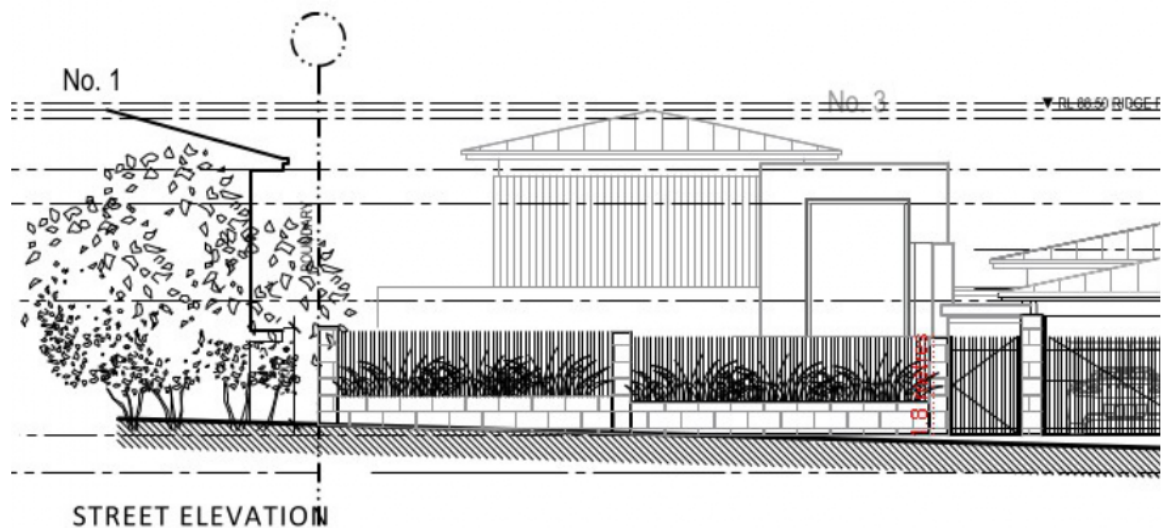
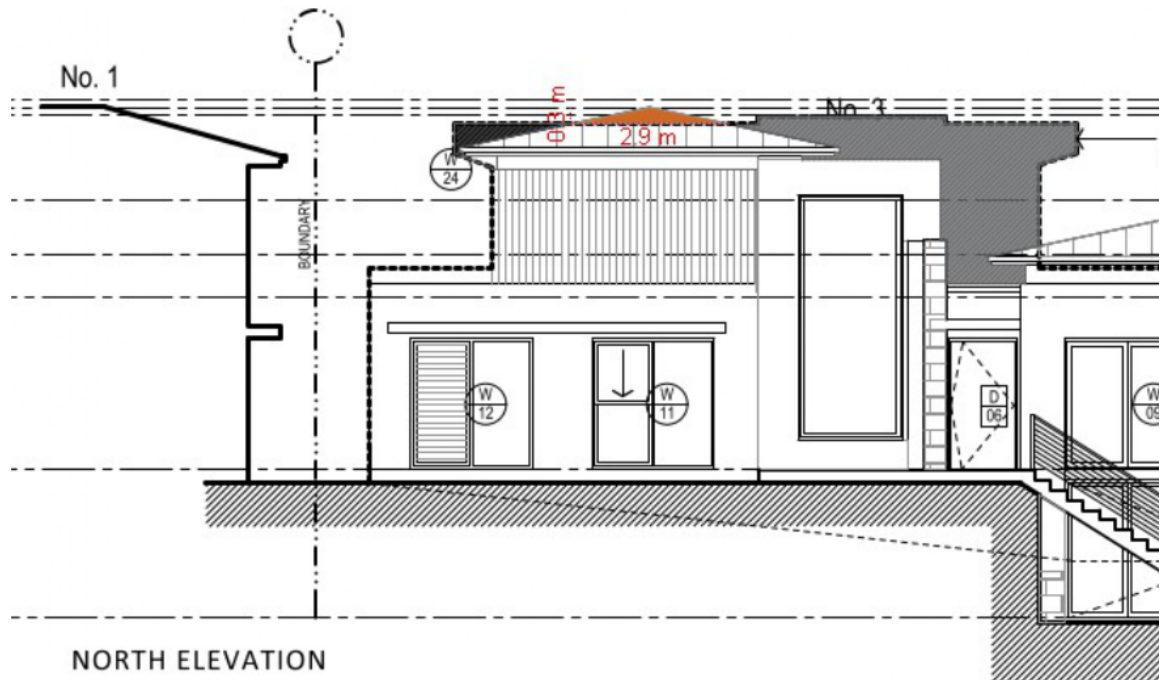


Photo 3. Drawing Md\_04 Proposed northern and street elevation plans demonstrating the proposed reduction to bulk at first floor level.

#### 4.1.10 Fencing

##### Merit consideration

The proposed masonry pier and steel fence up to a height of 1.8m exceeds the 1.5m control. Given the generally open and landscaped nature of the streetscape and surrounding locality, the proposed fence

is conditioned to be a maximum height of 1.6m above ground level.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2019**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Notwithstanding the proposed variation to the floor space ratio development standard, the requirements of Clause 4.6 do not strictly apply to the application as it is a modification made under Section 4.55 of the EP&A Act. As Clause 4.6 does not apply, the applicant is not required to make a written request.

The proposal seeks various modifications to the approved alterations and additions to the existing dwelling house. The proposal is considered to be a suitable and appropriate development within the context of the site.



The key planning issues considered within the assessment are the minor increases to the approved FSR and overall ridge height, and the associated view impacts. The increase to the approved FSR is modest and results in a total variation of 2.4% (7.8m<sup>2</sup>). It is also noted that while the development results in an increase to the approved ridge height of 160mm, the overall height calculated in accordance with the height of buildings control is reduced by 500mm in relation to the previous approval.

One submission was received in response to the notification/advertising of the application, and is addressed within this report.

The modifications and subsequent amendment made to the development provide improved outcomes in relation to visual bulk and views from surrounding properties.

Assessment of the application against the Manly LEP and DCP finds that the development is acceptable in regard to the relevant numerical controls and amenity considerations.

Based on the assessment completed within this report, the application is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0586 for Modification of Development Consent 10.2013.45.1 granted for alterations and additions to an existing dwelling including second floor addition, front and rear additions to the ground floor and first floor, double carport, driveway, rear deck, rear terraces, above ground swimming pool, pavilion with bathroom and kitchen facilities and landscaping on land at Lot 8 DP 758044,3 Mulgowrie Crescent, BALGOWLAH HEIGHTS, subject to the conditions printed below:

### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### **a) Modification Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Md_00 Roof Plan	Amendment F, 31 October 2020	Contemporary Pool Constructions
Md_01 Lower Ground Floor Plan	Amendment Z, 3 November 2020	Contemporary Pool Constructions
Md_02 Ground Floor Plan	Amendment P, 14 October 2020	Contemporary Pool Constructions
Md_03 First Floor Plan	Amendment F, 14 October 2020	Contemporary Pool Constructions



Md_04 North, Street Elevations	Amendment G, 19 February 2021	Contemporary Pool Constructions
Md_05 West Elevation	Amendment G, 19 February 2021	Contemporary Pool Constructions
Md_06 East Elevation	Amendment G, 19 February 2021	Contemporary Pool Constructions
Md_07 South Elevation	Amendment E, 3 November 2020	Contemporary Pool Constructions
Md_08 Section A-A	Amendment E, 18 February 2021	Contemporary Pool Constructions
Md_09 Section B-B	Amendment E, 18 February 2021	Contemporary Pool Constructions

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Report	26 October 2020	Building Code and Bushfire Hazard Solutions

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

f) The development is to be undertaken generally in accordance with the following:

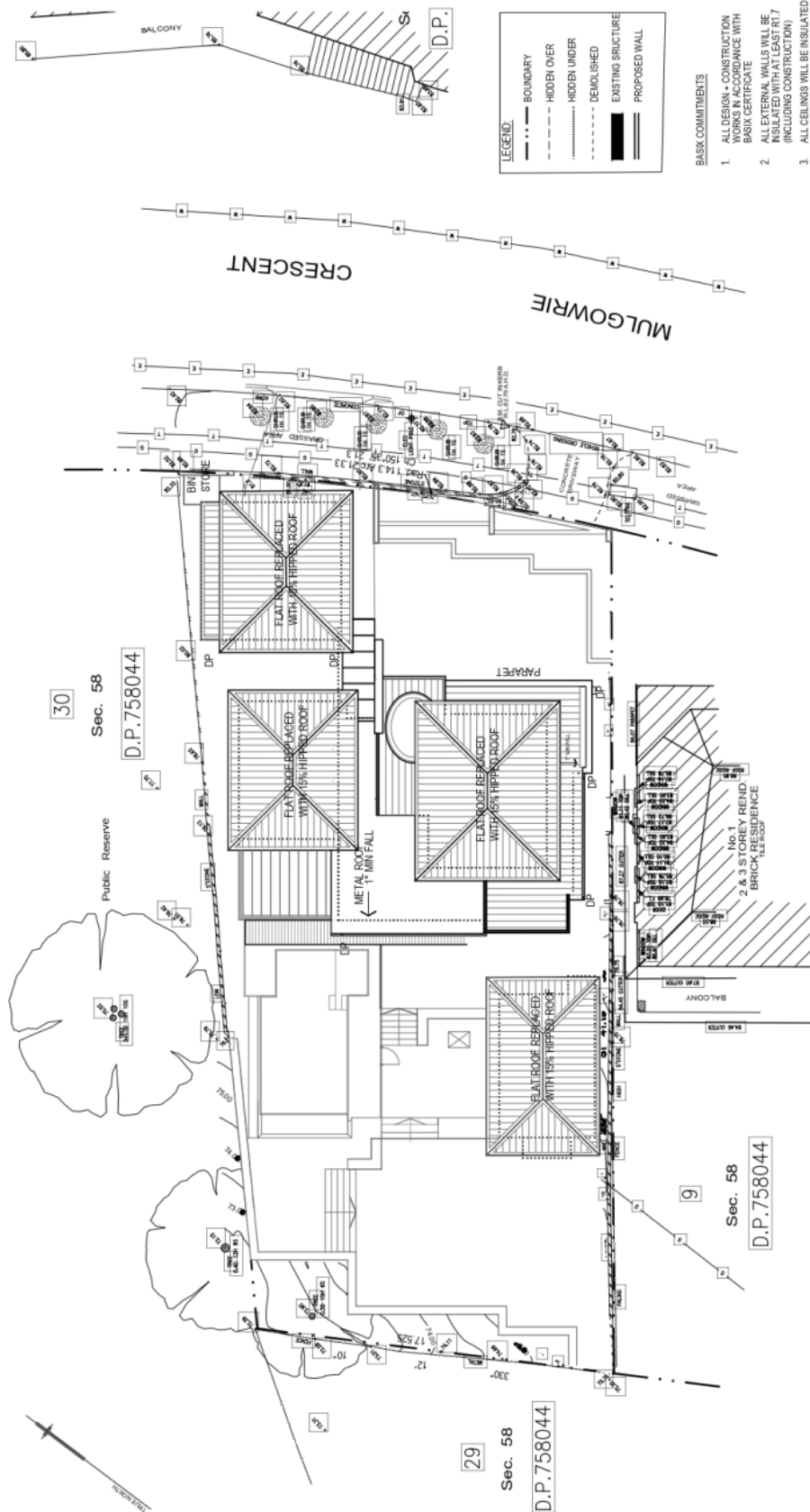
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Add Condition 22A. Front Fence to read as follows:**

The proposed front fence is to have a maximum height of 1.6m above ground level at any point on the street side of the fence.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To maintain consistency with the fencing characteristics of the locality.



drawing  
**Md\_00**  
AMENDMENT F 201031



**Roof Plan**

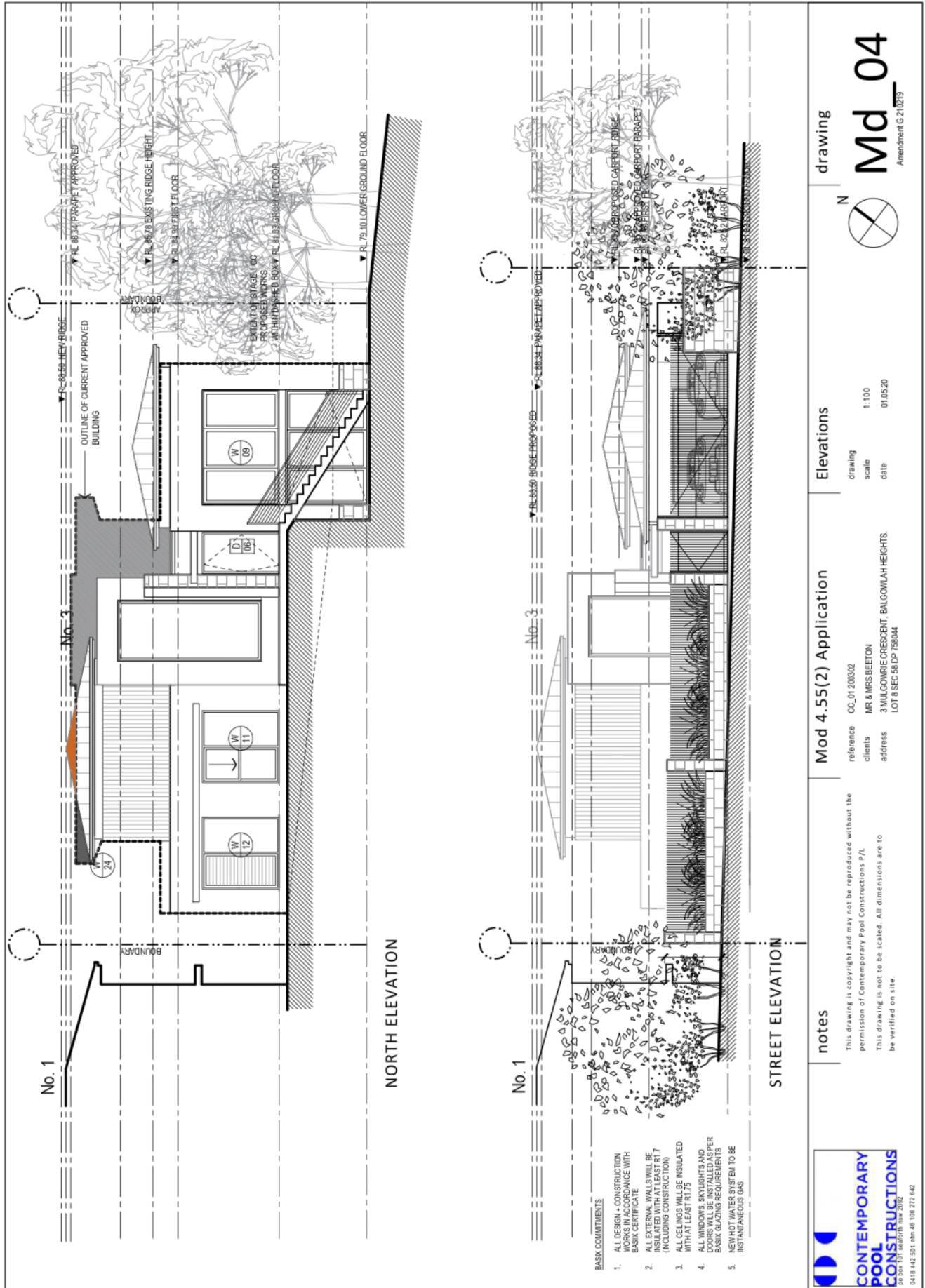
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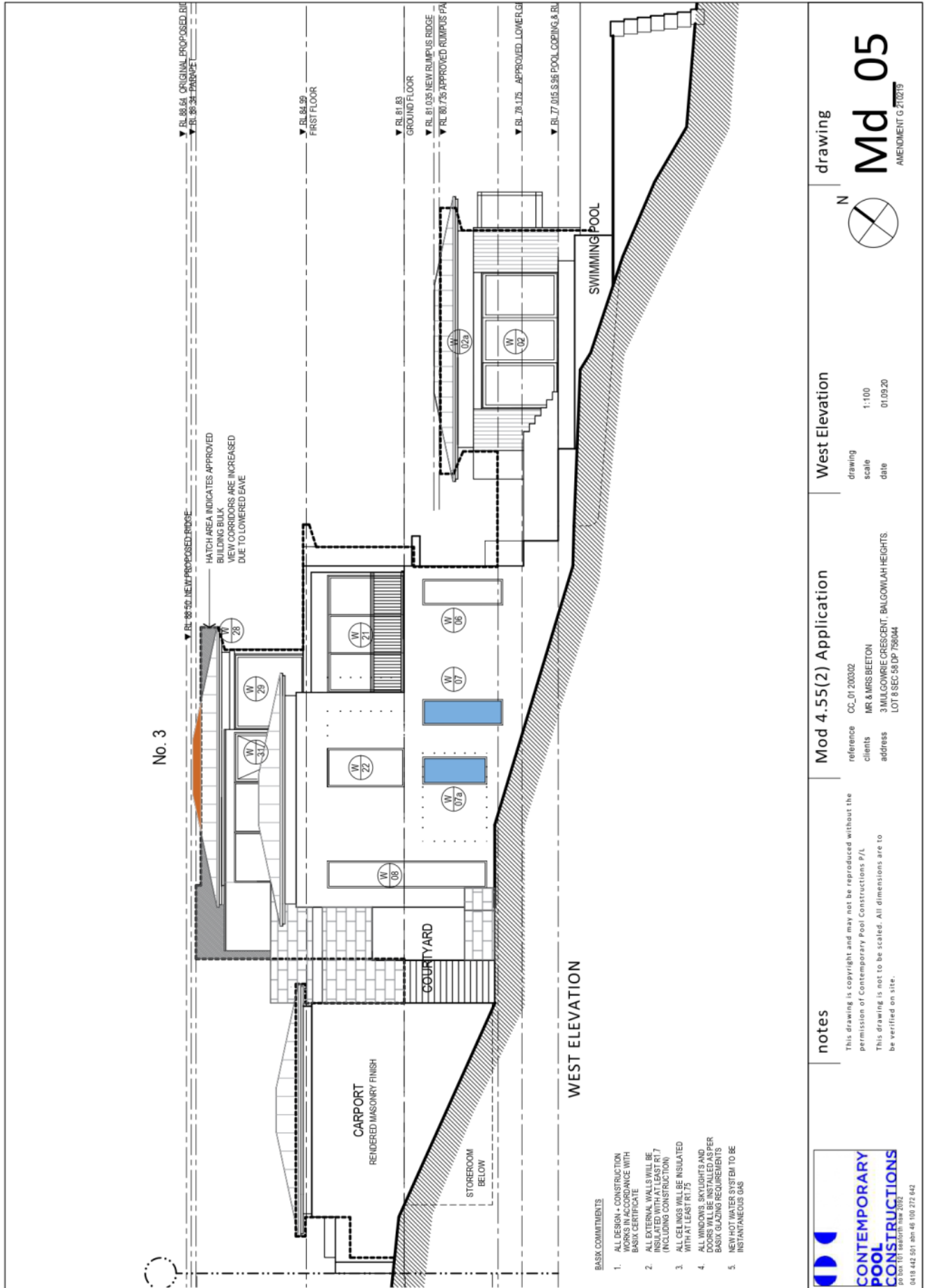
**Mod 4.55(2) Application**

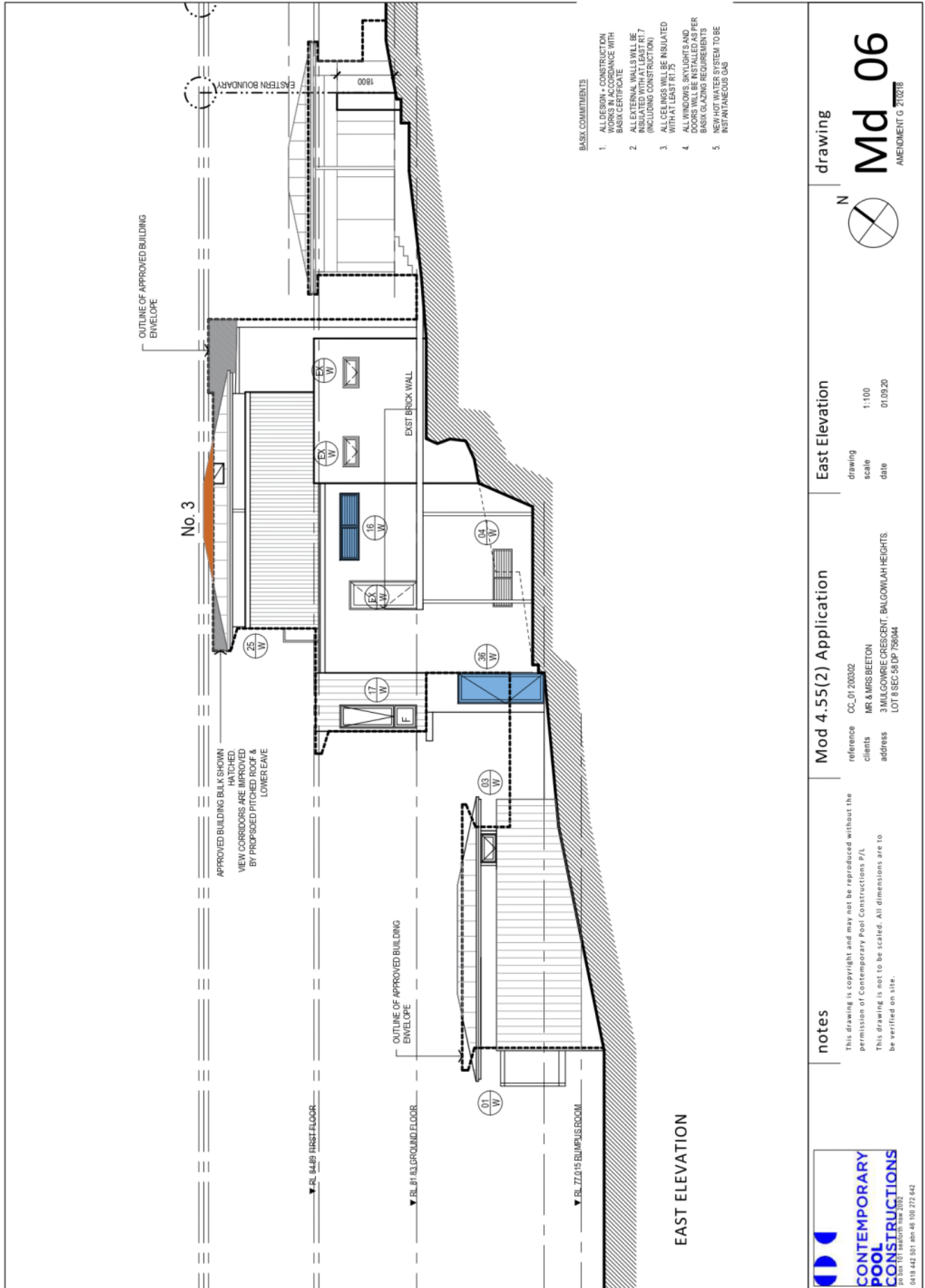
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clients MR & MRS BEETON  
address 3 MULGOWRIE CRESCENT, BALGOWLAH HEIGHTS,  
LOT 8 SEC 38 DP 758044

**notes**

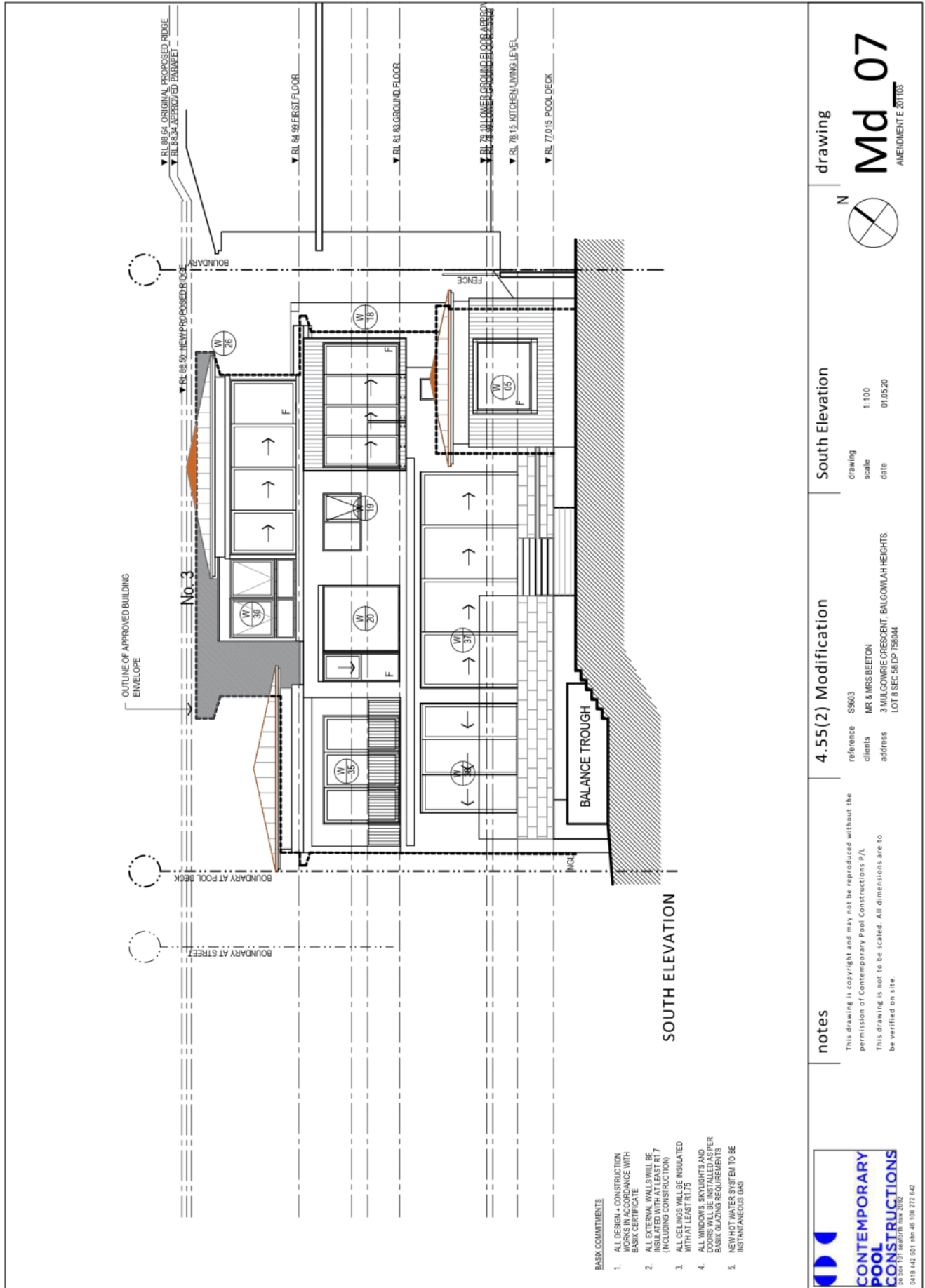
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**ITEM 3.4****DA2020/1372 - 15 OYAMA AVENUE MANLY - ALTERATIONS  
AND ADDITIONS TO A DWELLING HOUSE****REPORTING MANAGER****TRIM FILE REF****2021/163405****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**
- 3 Clause 4.6 - Appendix B**
- 4 Clause 4.6 - Appendix C**

**PURPOSE**

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard and floor space ratio.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to DA2020/1372 for Alterations and additions to a dwelling house on land at Lot 1 DP 1087597 & Lot 2 DP 1087597 & Lot CP SP 13460, 15 Oyama Avenue, Manly, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1372
<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot CP SP 13460, 19 - 21 A Addison Road MANLY NSW 2095 Lot 1 DP 1087597, 15 Oyama Avenue MANLY NSW 2095 Lot 2 DP 1087597, 15 Oyama Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential Manly LEP2013 - Land zoned E4 Environmental Living
<b>Development Permissible:</b>	Yes - Zone R1 General Residential Yes - Zone E4 Environmental Living
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Proprietors of Strata Plan 13460 & 14339 Sheona Mary Mckenzie Devin
<b>Applicant:</b>	Chrofi
<b>Application Lodged:</b>	28/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	26/11/2020 to 10/12/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 32.9% 4.4 Floor space ratio: %
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 942,425.00

### PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing dwelling. The application relates to two properties - 15 Oyama Road and 19-21 Addison Road, solely because there is an existing balcony on the western side of the dwelling at 15 Oyama that encroaches over the boundary between the two properties. This balcony is to be removed as part of the proposal, so practically speaking, the works proposed in the application generally relate to 15 Oyama Road only.

The proposed works are described as follows:

- The existing western balcony and roof, which encroaches over the neighbouring property, 19A-21 Addison Road, Manly, is to be removed. Part of the dining room on the southern side of the ground floor is to be removed. Internal walls on the ground floor are to be removed to provide more manoeuvring area within the garage. Small parts of roofing on the eastern and northern elevations at ground floor level will also be removed, and the eaves of the roof at the upper level are also proposed for demolition. The western portion (500mm) of the upper level master bedroom is to be removed.
- Alterations to the lower ground floor will provide a bedroom, bathroom, rumpus room and laundry. The existing northern balcony will be pulled back and privacy screens added. A spa pool is proposed within the lower ground floor balcony.
- The ground floor level will be reconfigured to provide a living room, kitchen, informal dining room and w.c. Soft landscaping will be provided to the southern boundary. The street presentation will be improved and the garage reconfigured.
- Minimal changes are proposed on the upper floor level. The master bedroom will be reduced in depth by 5.0m x 0.5m and the ensuite increased by 1.2m x 2.9m.
- Skylights are to be added into the existing roof.
- Excavation of 1.3m-1.54m is required for the alterations to the lower floor level.
- Existing landscaped areas are retained and additional landscaping within those areas is proposed.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features  
 Manly Development Control Plan - 4.1.10 Fencing  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot CP SP 13460 , 19 - 21 A Addison Road MANLY NSW 2095</p> <p>Lot 1 DP 1087597 , 15 Oyama Avenue MANLY NSW 2095</p> <p>Lot 2 DP 1087597 , 15 Oyama Avenue MANLY NSW 2095</p>
<b>Detailed Site Description:</b>	<p>The site is located at the end of Oyama Avenue in a culdesac, and is made up of two lots; Lot 1 DP 1087597 where the dwelling is located, and Lot 2 DP 1087597, which is mainly occupied by the existing garage. The application also relates to 19A-21 Addison Road (Lot CP SP 13460), which shares a boundary with the subject site, as the works involve demolition of an existing deck which currently encroaches over the common boundary onto the Addison Road neighbour. The new additions are confined to 15 Oyama Avenue.</p> <p>The site is irregular in shape, and is located overlooking Sydney Harbour to the west. It slopes steeply from the Oyama Avenue frontage down to the west, north and south west. The topography continues down from the site to meet the water.</p> <p>There is an existing three storey dwelling on site, with an attached single garage. Surrounding development generally consists of detached dwellings of various ages and styles along Oyama Avenue, and medium density development at 19A-21 Addison Road.</p>

Map:





## SITE HISTORY

PLM2020/0094 - A prelodgement meeting was held with Council on 2 June 2020. The notes from this meeting indicated that the proposal as presented was not acceptable, for a number of reasons, generally to do with the proposed built form. The plans provided with the current development application (and assessed in this report) have been substantially scaled back in response to those notes.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of

Section 4.15 Matters for Consideration'	Comments
(EP&A Regulation 2000)	<p>consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/11/2020 to 10/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and

Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Gabrielle Elizabeth O'Connor	14 Oyama Avenue MANLY NSW 2095
Mr Alan James Young	6 Oyama Avenue MANLY NSW 2095
Mr Richard Douglas Hayes	24 / 122 Bower Street MANLY NSW 2095
Mr Nicholas Robert Forster Mrs Camilla Heloise Forster	10 Oyama Avenue MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- View loss
- Cost
- Compliance with relevant planning controls
- Streetscape
- Notification
- Consultation
- Privacy
- Submission in support

The matters raised within the submissions are addressed as follows:

- **View loss**

Concerns were raised with regard view loss caused by the proposal.

Comment:

This issue has been assessed in detail under DCP clause 3.4.3 Maintenance of Views in this report. In summary, a condition is recommended to retain the existing roof height (as opposed to raising portions of it as proposed). Subject to this condition, the proposal will have negligible impacts on views from neighbouring properties, and is considered acceptable.

- **Cost**

Concerns were raised that the proposed cost of works was inaccurate.

Comment:

The application includes a Cost Summary Report form, filled out by a registered architect. This is in accordance with the lodgement requirements for a development application of this type, with a cost of works over \$100,000. The application fulfils the relevant requirements in this regard. The cost of works (\$942,000) is considered reasonable given that the alterations and additions generally maintain the overall external 'shell' of the existing dwelling, and will not significantly alter the overall shape of the existing dwelling.

- **Compliance with relevant planning controls**

Concerns were raised with respect to non-compliance with relevant planning controls, particularly built form controls, and including the overall height control.

Comment:

Non-compliances with relevant controls have been identified and assessed in detail in the relevant sections of this report. In summary, the proposal is considered generally acceptable in the circumstances of the site, subject to a condition to maintain the existing roof height to preserve views.

- **Streetscape**

Concerns were raised with regard to streetscape issues, though no specifics have been provided on what exactly is a concern with the proposal. The submission notes there is a wide variety of house sizes and types on the street, and therefore not a uniform streetscape.

Comment:

The proposal has been assessed against relevant clauses in the Manly DCP, including 3.1.1 Streetscape (Residential areas). The proposal includes relatively minor changes to the front of the building, and generally retains and increases landscaping in the small front setback area in the south eastern corner. The existing garage location will be retained. A new front wall is proposed to replace the existing removed front wall of the dwelling, and roofing. As discussed under DCP clause 4.1.10 Fencing, a condition is recommended to limit this wall to 1.8m in height. Subject to this condition, the proposal is considered acceptable in relation to streetscape impacts.

- **Notification**

Concerns were raised with regard to the notification area.

Comment:

In response to these concerns the application was renotified, including all properties along Oyama Avenue down to where it meets Cove Avenue. The notification area is subsequently considered adequate, and the submission generally satisfied in this regard.

- **Consultation**

Concerns were raised that the applicants did not consult with neighbours prior to lodging the application.

Comment:

There is no requirement to consult with neighbours prior to lodging an application. The application has been notified appropriately to surrounding neighbours, to make them aware and allow for submissions.

- **Privacy**

Concerns were raised by the owners of 10 Oyama Avenue with regard to privacy impacts from the front windows, and particularly the window from the room labelled gym at first floor level. A request was made to have these windows have high sill heights or structure screening to restrict views in the direction of 10 Oyama Avenue.

Comment:

The gym window and bathroom window facing over the front boundary at first floor level are both proposed to be enlarged. The distance from the gym window on the subject site to the front of the dwelling and balcony at 10 Oyama Avenue is approximately 25m and at an angle across the public road (and a similar distance from the bathroom window). Screening is proposed



external to the windows across the front elevation at first floor level, which will help to restrict any views directly into neighbours. Given the distance and screening, the proposal is not considered to result in any unreasonable privacy impacts. Further, to impose a high sill height, or require screening that restricts the view over the public road is inconsistent with safety and security principles, which encourage windows on front elevations to provide casual surveillance of the public domain. No conditions or amendments are recommended in this regard.

- **Submission in support**

One submission in full support of the application was received, from the owners of the adjacent property to the south, 14 Oyama Avenue.

Comment:

These comments are noted and have been taken into consideration in the assessment of the application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the partial demolition of the existing building and structures, and the construction of new alterations and additions to the existing dwelling inclusive of an outdoor spa and reconfigured internal layout.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.3 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul> <p>A Landscape Plan is provided with the application and the works include the planting of groundcovers at grade, groundcovers and small shrubs in planter boxes and a new green wall on the existing southern boundary wall.</p> <p>An Arborist Report has also been provided in the application which notes one significant tree within the site, and two additional significant trees in adjoining properties. All three trees have been noted to be retained, as all tree protection zones sit below proposed works. These three trees have also been noted as retained in Architectural Plans as well as the Statement of Environmental Effects. Through the retention of existing trees and vegetation, controls 3.3.1, 3.3.3 and 4.1.5 are satisfied by softening the built form whilst preserving the scenic value, character and important landscape features that the native vegetation provides.</p> <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees, and the completion of</p>



Internal Referral Body	Comments
	landscape works as proposed on the amended Landscape Plans.
NECC (Bushland and Biodiversity)	<p><b>Relevant Provisions</b> The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016 (BC Act)</li> <li>• NSW Biodiversity Conservation Regulation 2017 (BC Regulation)</li> <li>• Manly LEP Clause 6.5 (Terrestrial Biodiversity)</li> <li>• Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands)</li> <li>• Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat)</li> </ul> <p><b>Impact Assessment</b> The subject site is identified as being within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act. Accordingly, the DA has been accompanied by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method.</p> <p>The BDAR (GIS Environmental Consultants, September 2020) provides a comprehensive assessment of potential impacts to Little Penguins, Long-nosed Bandicoots and other relevant threatened species arising from the proposal. It is considered that the key potential impacts arising from the proposal are associated with demolition, excavation and construction activities; these have been assessed in the BDAR and include:</p> <ul style="list-style-type: none"> <li>• Noise and vibration in penguin habitat during demolition, excavation and construction</li> <li>• Waste management activities and increased human use of penguin habitat areas during construction</li> <li>• Sedimentation and run-off into penguin habitat</li> <li>• Impacts to other threatened species i.e. Long-nosed Bandicoot population, Grey-headed Flying-fox and Large-eared Pied Bat.</li> </ul> <p><b>Noise and vibration during demolition, excavation and construction</b> Construction-related impacts such as noise and vibration will be primarily managed by timing high-impact works (i.e. demolition and excavation) to occur during the penguin non-breeding season. Whilst the BC Regulation defines the Little Penguin breeding season as “the period from 1 July in any year until 28 February in the following year (both dates inclusive)”, penguins may vacate a nest/moult site prior to the end of February and/or may return to nest sites prior to 1 July. As such, Section 5.9 of the BDAR provides detailed penguin monitoring provisions to enable adaptive noise and vibration management in</p>

Internal Referral Body	Comments
	<p>response to variable patterns of penguin site usage. These recommendations are supported.</p> <p>In accordance with pre-lodgement advice, a Construction Noise and Vibration Management Plan (CNVP) (Acoustic Studio, September 2020) has also been prepared in conjunction with the BDAR. The plan provides four options for excavation methodology with an assessment of implications for noise, vibration and duration of works. In order to facilitate completion of all high-impact works during the window in which penguins are not utilising the site, the recommendation to utilise 'Option A' for excavation (saw cut of perimeter with hammers to break up rock) is supported.</p> <p>The CNVP also includes detailed provisions for managing, monitoring and responding to noise and vibration impacts on penguins (and nearby residential receptors) whilst penguins are utilising the site. The acoustic and ecological consultants provide the following recommendations:</p> <ul style="list-style-type: none"> <li>• Airborne and ground-borne noise management levels near the closest penguin nest not to exceed 75 dB(A) whilst penguin/s are occupying nest sites;</li> <li>• Vibration Dose Values (VDVs) at the closest penguin nest not to exceed 0.8 m/s<sup>1.75</sup> while penguin/s are occupying nest sites.</li> </ul> <p>These recommendations are supported. Noise and vibration levels are to be monitored and managed in accordance with the monitoring protocols set out in Section 5.9 of the BDAR.</p> <p>It is considered that, subject to proposed mitigation and monitoring measures, noise/vibration associated with demolition, excavation and construction works are unlikely to impact penguin habitat or behaviour.</p> <p><b>Waste management activities and increased human use of the foreshore during construction</b></p> <p>In order to avoid disturbing penguin breeding/moulting behaviour, delivery of materials and removal of waste is to be undertaken from Addison Road and not via the foreshore while penguins are utilising the site (as determined through monitoring protocols set out in Section 5.9 of the BDAR). This is consistent with the BDAR's statement that: "The waste and storage of building materials is most likely to be stored in a metal skip bin on the property in the existing garage/driveway and/or on the existing small garden adjacent to the road reserve". A Waste Management Plan (Jerome Cateaux, July 2020) has also been submitted with the DA.</p> <p><b>Sedimentation and run-off into penguin habitat</b></p> <p>Inadequately managed sedimentation and construction run-off has the potential to impact penguin nesting/moulting/loafing habitat at the</p>

Internal Referral Body	Comments
	<p>bottom of the cliff. A Soil and Sedimentation Plan (Michael Frost and Associates, July 2020) has been submitted with the DA and includes appropriate provisions to prevent sedimentation and run-off into penguin habitat.</p> <p><b>Impacts to other threatened species</b> The development footprint is generally confined to the existing built form and is therefore unlikely to result in a permanent loss of wildlife habitat such as foraging resources for Long-nosed Bandicoots (lawn/garden) or Grey-headed Flying-foxes (native figs).</p> <p><b>Conclusion</b> The proposed development has been designed, located and will be managed to respond appropriately to important site constraints and avoid adverse environmental impacts. It is considered that, subject to recommended conditions, the proposal can be undertaken without adverse impact to the endangered populations of Little Penguins and Long-nosed Bandicoots, other threat-listed species. or their habitats.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the</p>

Internal Referral Body	Comments
	<p>requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</b>  <b>Harbour Foreshores &amp; Waterways Area</b>  The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>The subject site is located within/adjacent to the W2 (Environmental Protection) Zone.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p><b>Manly LEP 2013 and Manly DCP</b>  Landslide/ Landslip Hazard Management  The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>A Geotechnical Assessment &amp; Risk Analysis-Update Report by D. Katauskas dated July 2020 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that the likelihood and consequences of an adverse event occurring, which could cause damage to the property or injury to people, is rare and insignificant. This warrants the application of a VERY LOW RISK category to the project, which is therefore ACCEPTABLE under Council's Risk Policy.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013.</p> <p><b>Foreshores Scenic Protection Area Management</b>  The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p><b>Development on Foreshore Area</b></p> <p>The subject site is also shown to be as "Manly Foreshores Area" on Council's Area "within the foreshore building line Map" in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p>The DA proposes the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area these proposed works are consistent with Clause 6.10(2).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.</p>
Parks, reserves, beaches, foreshore	<p>This application is for the partial demolition of the existing building and structures, and the construction of new alterations and additions to the existing dwelling inclusive of an outdoor spa and reconfigured internal layout.</p> <p>The property adjoins the Manly Foreshore which is located downslope of the site. All works adjoining public land and foreshore must ensure that sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from entering the foreshore area.</p> <p>Through the retention of vegetation and trees on the site, as noted in the Statement of Environmental Effects and Architectural Plans, the natural scenic qualities of the coastline are protected and maintained.</p> <p>No encroachments are permitted on public land and all works shall be confined within the legal boundaries.</p> <p>Parks Referral has no objections to the proposal subject to conditions of consent.</p>
Strategic and Place Planning	HERITAGE COMMENTS



Internal Referral Body	Comments	
(Heritage Officer)	Discussion of reason for referral	
	<p>The proposal has been referred to heritage as the subject property is located within the vicinity of heritage items:</p> <p><b>Item I190 - House, "Trevitt House"</b> - 12 Oyama Avenue</p> <p><b>Item I1 Harbour Foreshore</b> - Extent of municipal boundary adjacent to the harbour</p>	
	Details of heritage items affected	
	<p>Details of the heritage items as contained within the Manly Heritage Inventory are:</p> <p><b>Item I190 - House, "Trevitt House"</b>  <u>Statement of significance:</u>            The subject property is considered to have historic, aesthetic, associative and representative heritage significance. The subdivision, development and ownership of the site has historic importance for its association with the subdivision of larger estates during the Federation era, the recovery of the building industry in Manly during the Great Depression and the popular retirement of wealthy country people to Manly. The building is designed in an Inter-War Mediterranean style. The building is also noted as having an association with prominent master builder Robert Wall and architect Frederick Harvey Fuller.  <u>Physical description:</u>            The building is consistent with the in Inter-War Mediterranean style. It is a two-storey rendered house with steeply pitched gable terracotta roof. 12 Oyama Road features square and Doric columns to front verandah and deck. First floor features include circular openings allowing light down into the front verandah. The front façade is also noted as retaining its original timber joinery. The street frontage is bound by a sandstone wall to the south and a modern double garage with trafficable roof to the northern portion.</p> <p><b>Item I1 Harbour Foreshore</b>  <u>Statement of significance:</u>            Natural landscape type - Aesthetic.  <u>Physical description:</u>            Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures</p>	
	Other relevant heritage listings	
	<table> <tr> <td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td></tr> </table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks approval for alterations and additions to the existing dwelling, involving large excavations and removal of internal walls at the lower ground level to convert the existing store/subfloor area into a rumpus with a bathroom, laundry and a bedroom. Proposed works to the ground floor level include modifications to the internal layout and changes to the garage. The original main roof is proposed to be retained with additional skylights, while the later additions are proposed to have a steeper pitch behind the extended external walls.</p>		
	<p>The proposed footprints and the envelope are very similar to the existing, therefore the proposal do not significantly alter the bulk and scale of the dwelling and considered to be consistent with the existing character of the area. Given the separation between the proposal and the heritage items, the impact of the proposal upon the significance of the heritage items, is considered manageable.</p>		
	<p>Therefore, no objections are raised on heritage grounds subject to a condition.</p>		
	<p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
Further Comments			
<p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 26 November 2020</p>			
External Referral Body	Comments		
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of		

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

#### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

##### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A378857\_03). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

##### **SEPP (Infrastructure) 2007**

###### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

As discussed by Council's Coast and Catchments officer, the subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP applies for this DA.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council's Coast and Catchments officer has assessed the proposal, and is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

**Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	11.3m	32.9%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.72:1	20%	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.3m
Percentage variation to requirement:	32.9%

Development standard:	Floor Space Ratio
Requirement:	0.6:1
Proposed:	0.72:1
Percentage variation to requirement:	20%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular



development,

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard are not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standards.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

In relation to Clause 4.3 Height of Buildings Non-compliance

- The proposal achieves the objectives of clause 4.3.
- The proposal achieves the objectives of the zone.
- The variation does not reduce amenity of neighbours or the public domain but enhances the internal amenity of the dwelling.
- The variation does not negatively impact the streetscape.
- The proposal is consistent in appearance and character with the surrounding area.
- The proposed alterations and additions are generally within the footprint of the existing dwelling, which minimises impacts on the existing landform, vegetation, threatened species and critical habitat.
- The non-compliant elements upgrade and enhance the appearance of the building through architectural design, compared to the existing presentation to the foreshore.
- The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the

development standards.

Comment:

These arguments are generally concurred with, subject to conditions of consent. The non-compliance with the height control occurs to the rear of the building where the land drops away sharply. This area will not significantly impact on views or amenity of neighbours. A condition has been recommended to delete the increased height of the northern and southern roof form (see discussion under clause 3.4.3 Maintenance of Views of the DCP in this report). This condition has been recommended due primarily to non-compliance with the wall height control in the DCP, not non-compliance with the height of buildings development standard. Subject to compliance with this condition, the proposal is not considered to have any unreasonable impacts on views, or any other unreasonable amenity impacts, to neighbours or the public domain.

The steepness of the site means that any alterations to the rear of the first floor will not comply with the control. Compliant alterations could instead be made to the front of the dwelling, but this would have a greater impact on neighbours in terms of view loss than the current non-compliant proposal. Additions could also be made further down the site by extending the footprint, but this would not necessarily result in a better environmental outcome in terms of development in the foreshore area. In relation to clause 4.6 Foreshore Scenic Protection Area of the LEP, the current proposal is considered a better outcome than an extension of the building footprint at the lower levels. Council's Biodiversity officer is also satisfied with the proposal in terms of impacts on penguins.

The arguments presented by the applicant are considered to constitute sufficient environmental planning grounds to vary the control in the circumstances.

In relation to Clause 4.4 Floor Space Ratio Non-compliance

- The proposal achieves the objectives of clause 4.4.
- The proposal achieves the objectives of the zone.
- The variation does not reduce amenity of neighbours or the public domain but enhances the internal amenity of the building.
- The variation does not negatively impact the streetscape.
- The proposal results in a reduction of non-compliance with the floor space ratio requirement compared to the existing building.
- The proposed alterations and additions are generally within the footprint of the existing dwelling, which minimises impacts on the existing landform, vegetation, threatened species and critical habitat.
- The proposed alterations and additions are generally within the footprint of the existing dwelling, which minimises impacts on the existing landform, vegetation, threatened species and critical habitat.
- The proposed parts of the development that breach floor space ratio control beyond the existing breaches are to upgrade and enhance the amenity and liveability of the building, being those parts of the building within the existing sub-floor area. They will not be readily visible from the surrounding area.
- The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

Comment:

These arguments are generally concurred with. The proposal results in a small reduction to the gross floor area of the existing building, and therefore makes the building slightly more compliant with the

development standard than the existing situation. The alterations and additions which increase the floor space significantly are contained within the existing building footprint, in the subfloor area. This increase is compensated for by a similar decrease in floor space at the ground floor level. The overall bulk and scale of the building will not therefore be significantly altered, and there will be no unreasonable impacts to the surrounding area. As discussed above, locating the works within the existing footprint is considered a positive outcome in relation to impacts on the foreshore scenic protection area and penguins.

The arguments presented by the applicant are considered to constitute sufficient environmental planning grounds to vary the control in the circumstances.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor Space Ratio development standards and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

*a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposal will generally maintain the overall height of the existing dwelling, which is consistent with surrounding development. The non-compliance is due in large part the steeply sloping topography at the rear of the dwelling. As discussed with regard to views in this report, a



condition is recommended to maintain the existing height of the flat portions of the roof, to minimise view loss. The proposal will generally update the existing building without significantly altering the overall shape or character. It is generally consistent with this objective.

*b) to control the bulk and scale of buildings,*

Comment:

The alterations and additions are generally relatively minor in the context of the existing dwelling on site. The non-compliant elements occur at the rear of the dwelling, where they will not significantly impact on the streetscape or neighbours. The proposal will generally maintain the overall shape, bulk and scale of the existing development when viewed from the harbour or foreshore.

*c) to minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

Views are discussed in detail under clause 3.4.3 Maintenance of Views in this report. In summary, the proposal is considered to maintain a reasonable sharing of views, subject to a condition of consent to maintain the height of the existing roof line. The proposed non-compliance to the overall height control occurs to the rear, and will not create unreasonable view impacts, from or to either private or public property.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The shadow diagrams submitted indicate that the proposal will not significantly alter overshadowing caused by the development. The proposal complies with solar access requirements.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The proposed additions are not in a recreation or environmental protection zone. The part of the proposal which falls within the E4 Environmental Living zone, is for demolition of the existing deck encroachment. Bulk and scale of development in this zone will effectively be removed.

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

- (1) The objectives of this clause are as follows:



*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The alterations and additions are relatively minor as viewed from the streetscape. The bulk of new floor space will be added in the existing subfloor area, within the existing building footprint. The proposal results in a minor overall reduction in gross floor area, and the development will remain consistent in bulk and scale with surrounding development.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The proposal will increase compliance with the floor space ratio control. The additional floor space will mainly be added at the lower level, where it will not obscure any views. View loss in general has been assessed to be minimal, and acceptable as discussed in this report.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The alterations and additions are generally relatively minor as viewed from off site, and contained within the existing footprint of the building. The visual relationship of the development to the surrounding area will not be significantly altered.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposal will be within the existing building footprint, and this will help to minimise any adverse environmental impacts. Council's Biodiversity Officer is satisfied that the development will not unreasonably impact on Penguins, and the proposal will not impact on the use or enjoyment of surrounding public or private land in any significant way.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

N/A

## Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment: The dwelling will remain a single dwelling as a result of the proposed alterations and additions.

- *To provide for a variety of housing types and densities.*

Comment: The proposal will not alter the existing housing type or density.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building / Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

**Mainly Development Control Plan**

**Built Form Controls**

Built Form Controls - Site Area: 365.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1	N/A	Yes
	Minimum dwelling Size: 117sqm	263.04sqm	N/A	Yes
4.1.2.1 Wall Height	W: 7.4m (based on gradient 1:6.9)	11.3m	52.7%	No
	E: 7.3m (based on gradient 1:7.6)	7.6m	4.1%	No
	S: 6.9m (based on gradient 1:22)	7.6m	10.1%	No
	N: 7.4m (based on gradient 1:6.9)	11.3m	52.7%	No

4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	1.45m	N/A	Yes
	Parapet Height: 0.6m	250mm	N/A	Yes
	Pitch: maximum 35 degrees	37 degrees	N/A	Yes - existing and unchanged
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Nil, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N 3.76m (based on wall height) S 2.21m (at closest point)	5.8m 1.7m	N/A 23.5%	Yes No
	Windows: 3m	N 8m S 1.5m	N/A 50%	Yes No
4.1.4.4 Rear Setbacks	8m	0.4m	95%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area (201.1sqm)	53.9% (197sqm)	2%	No
	Open space above ground 25% of total open space	12% (24sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (70.4sqm)	63.6% (125.3sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	60sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Existing nil setback to be retained.	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.3m	69.69%	No
	1m curtilage/1.5m water side/rear setback	2.1m minimum	N/A	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

#### **3.4.3 Maintenance of Views**

Merit consideration:

The development is considered against the Objectives of the Control:

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment:

The views affected are harbour water / headland views, where including some land / water interface. The views are considered valuable, given they involve Sydney Harbour, and the water, headland, and interface.

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment:

Submissions were received from two neighbouring properties in relation to views, 4 Oyama Avenue and 10 Oyama Avenue.

4 Oyama

The views are standing views obtained from windows in the upper level bedroom, ensuite and front bedroom deck. The views are directly across the side boundary, and from the deck are screened by an existing privacy screen.

**View from the ensuite of 4 Oyama Avenue**





**View from the upper level bedroom window of 4 Oyama Avenue (camera zoomed in)**



#### 10 Oyama

Access to 10 Oyama Avenue could not be gained. However, the owner submitted their own photo. The views are standing views obtained across the side boundary from the upper level bedroom and front bedroom deck.

#### **Photo submitted by owner of 10 Oyama Avenue**



*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

#### Comment:

The bedrooms of both properties gain extensive views of Manly and the Harbour foreshore in a northerly direction across their front boundaries. The views affected by this proposal form a relatively small part of the overall view available from both properties.

#### 4 Oyama

From number 4, the proposal will impact on the current view of the top of the headland above the flat portions of the existing roof line, where the new parapet height is proposed 240mm above the existing height of the roof. The view corridor to the headland and water interface through the southern side of the subject site will be retained, as the alterations and additions are not proposed to be extended to the south. Given the expansive views that will remain unaffected to the north of 4 Oyama, the impact on the



side view of the portion of headland is considered to be minor in the context of these principles.

#### 10 Oyama

From number 10, the proposal will impact on the view of the headland / water interface, that is currently available over the existing flat portion of roofing on the southern side of the existing dwelling, and likely remove the land / water interface in that location. Like number 4, number 10 will retain expansive northern views completely unaffected by the proposal. The view affected does include slightly more valuable view (being the land / water interface) than from number 4, and for this reason, the view loss is considered to be minor to moderate.

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

#### Comment:

The proposal is non-compliant with the overall 8.5m height control, due to the steep drop off in the topography at the rear of the site. This will impact on the view from number 4 Oyama Avenue across the northern portion of existing flat roof. However, given the location and levels of 4 Oyama compared to the subject site, the view is impacted by the raising of the parapet height at the front of the dwelling, not the rear (where the non-compliance occurs). The front parapet on both the northern and southern portions of the flat roof areas will comply with the overall 8.5m height control, but will present a minor non-compliance to the wall height control at the northern end of the eastern elevation.

The view from number 10 Oyama is from a higher level than that of number 4, and it will be impacted by the increased parapet height at the rear of the subject site, which, although compliant with the 8.5m height limit, is significantly non-compliant with the wall height control in the DCP, being between 7.6m to 8.5m high as the land slopes away.

Given these considerations, a condition is recommended to delete the raising of the roof height and retain these views. The view loss, although relatively minor in the context of the entire views available from each site, is caused by significant non-compliance with the applicable built form controls. The ceiling height of the existing rooms below the roof elements have not been proposed to be raised also, and it is not considered that this condition will have any significant amenity impact on the occupants. Subject to this condition, the proposal will largely retain the existing views, and is considered generally acceptable in relation to view sharing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

##### Description of non-compliance

Clause 4.1.2 of the MDCP 2013 relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

West Elevation: 7.4m (1:6.9 gradient) - Proposed 11.3m  
East Elevation: 7.3m (1:7.6 gradient) - Proposed 7.6m  
South Elevation: 6.9m (1:22 gradient) - Proposed 7.6m  
North Elevation: 7.4m (1:6.9 gradient) - Proposed 11.3m

Moreover, the control further limits buildings to 2 storeys in height. The proposal 2-3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs generally as a result of the proposal to excavate the existing subfloor storage areas and make this a habitable area.

#### Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

*(1) (a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing height and desired future streetscape character in the locality.*

#### Comment:

The proposal is for a relatively minor alteration to the existing building in terms of heights. The proposal exacerbates existing height non-compliances (including the wall height control by up to 240mm) and the overall height of buildings development standard, due to the minor extension to the rear of the upper level where the land falls away steeply. The proposal will remain generally consistent with the existing built form and prevailing heights in the area, and will not have any detrimental impacts on the streetscape.

*(1) (b) To control the bulk and scale of buildings.*

#### Comment:

The proposal is for relatively minor alterations and additions in terms of changes to the visible built form. The overall external shape and height of the building will not be dramatically altered, and the bulk and scale of the building will remain largely consistent with what already exists on site, which is largely consistent with surrounding development in terms of bulk and scale.

*(1) (c) To minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including harbour and foreshores).*

#### Comment:

As discussed in detail within the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013, the proposals will impact upon existing headland and water views. This impact will be caused by the raising of the existing flat sections of roof (to the north and south of the central pitched roof element) by 240mm, which in turn exacerbates existing non-compliance with the wall height control. Due to this non-compliance, a condition is recommended to leave the existing roof height as exists. The application has not proposed increased ceiling heights, so this is unlikely to impact on the internal amenity of the building. Subject to this condition, the existing wall heights will be maintained, and any view loss caused by the proposal will be minor to negligible.

*(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.*

Comment:

The proposal will not create significant additional overshadowing of the southern neighbours or to the public domain.

*(1) (e) To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

15 Oyama Avenue is not located within a recreation or environmental protection zone. 19-21 Addison Road is in the E4 Environmental Living zone. However, the only part of the application that relates to work on 19-21 Addison Road is to demolish and remove the existing deck encroachment onto that property. The overall height and bulk of the proposal on 15 Oyama Avenue will not be significantly altered. It will not have any detrimental impacts on the adjacent E4 zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

Description of non-compliance

The new external additions of the proposal will be 1.7m from the southern side boundary at the closest point (2.21m required). This is a small curved section of wall at the upper level, which simply changes the shape of the corner of the building between the Bed 1 and ensuite.

The proposal is also 0.4m minimum from the rear boundary. However, this maintains and generally improves the existing rear setback, through partial demolition of the existing rear master bedroom wall at first floor level, and deletion of part of the rear deck (including the area encroaching over the boundary).

Further, an enlarged window is located within 3m of the southern boundary, being a window from the ground level entry foyer (an existing kitchen window) which is to be between 1.5m - 2.8m from the boundary.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:



The proposal will have generally minor impacts on the streetscape. The application proposes an overall renovation of the dwelling, but essentially maintains the existing shape and setbacks of the building. The minor new non-compliant element on the southern side will have little to no impact on the streetscape.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal is generally consistent with the above amenity considerations. A condition is recommended to maintain the existing roof height to preserve views (see relevant section of this report). The altered and enlarged window on the southern elevation within 3m of the side boundary is at the ground level, and only looks into the side wall of the adjacent garage at 14 Oyama Avenue. Additionally, the existing room is a kitchen, which is considered a much higher use room (with commensurate privacy impacts) compared to the proposed use of the room as an entry foyer. No unreasonable privacy impacts will be caused in this respect.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment:

The proposed non-compliances to the side boundary setback control essentially maintain the existing setbacks, and are generally cosmetic in nature. A degree of flexibility is acceptable in the circumstances.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed non-compliant elements do not impact on the ability of the site to provide for these matters given their locations.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

##### Description of non-compliance

55% landscaped area is required. The proposal results in a landscaped area of 53.9%. However, this is an improvement on the existing situation due to demolition of decks at the rear and northern sides, and increased landscape area in the south eastern (front) corner of the site.

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

##### Comment:

The proposal generally increases landscaped area on site. Council's Biodiversity officer has assessed the application, with particular attention to penguins, and has recommended approval subject to conditions.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

##### Comment:

Soft landscaped area on site will be increased through the demolition of existing decks and terracing.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

##### Comment:

The proposal will not increase the existing footprint on site, and sunlight, privacy and views (subject to condition) will be maintained, as assessed throughout this report.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

##### Comment:

Water infiltration is likely to be marginally increased through the demolition of some existing hard surface area on site.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The proposal includes a landscape plan for the front south east corner of the site, and will remove existing decking from the neighbouring property to the west. It will be consistent with this objective.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

Council's Biodiversity officer has assessed the proposal and is satisfied subject to conditions of consent in this regard.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

The proposal does not comply with the requirement for spa pools to be less than 1m above ground level. The spa is proposed to be located on the northern lower ground level deck, and will be up to 3.3m above ground level.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposal provides for privacy screening surrounding the spa on the eastern and northern sides, which will provide adequate privacy to the eastern boundary. The spa is set well back from the northern boundary (approximately 9m minimum). Along with a condition which requires appropriate location and treatment of associated mechanical equipment, this will result in an outcome in which reasonable levels of privacy will be maintained.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposed spa will not be visible from the streetscape, and will have no impacts on the established character.

Objective 3) To integrate landscaping; and

Comment:

The proposed spa is located on the existing lower level deck, which is to be reduced in size. The existing canopy tree to the north will be retained.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not bush fire prone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.10 Fencing**

The new front wall proposed is up to 3.1m high. The control requires front fences and walls to be no more than 1m in height. In this case, the new front wall will partially replace the existing front wall of the dwelling and roofing will also be removed. There are a wide variety of front wall heights along Oyama Avenue, with numerous properties having front walls significantly higher than 1m, on both the high and low side of the street. Given the existing streetscape character, a condition is recommended to limit the height of the front wall to 1.8m. This will still provide a measure of privacy and security to the front entry area, while remaining generally consistent with surrounding development.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposal includes excavation of up to 1.54m in depth. The excavation will be contained within the existing footprint of the building. The geotechnical report submitted with the application has addressed the requirements of the LEP. The recommendations of the report have been included as a condition of consent.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9,424 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$942,425.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/1372 for



Alterations and additions to a dwelling house on land at Lot CP SP 13460, 19 - 21 A Addison Road, MANLY, Lot 1 DP 1087597, 15 Oyama Avenue, MANLY, Lot 2 DP 1087597, 15 Oyama Avenue, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-DA-000 Revision A	11/9/20	Chrofi Archite
A-DA-006 Revision A	11/9/20	Chrofi Archite
A-DA-007 Revision A	11/9/20	Chrofi Archite
A-DA-009 Revision A	11/9/20	Chrofi Archite
A-DA-010 Revision A	11/9/20	Chrofi Archite
A-DA-011 Revision A	11/9/20	Chrofi Archite
A-DA-012 Revision A	11/9/20	Chrofi Archite
A-DA-013 Revision A	11/9/20	Chrofi Archite
A-DA-101 Revision A	11/9/20	Chrofi Archite
A-DA-102 Revision A	11/9/20	Chrofi Archite
A-DA-103 Revision A	11/9/20	Chrofi Archite
A-DA-104 Revision A	11/9/20	Chrofi Archite
A-DA-105 Revision A	11/9/20	Chrofi Archite
A-DA-202 Revision A	11/9/20	Chrofi Archite
A-DA-204 Revision A	11/9/20	Chrofi Archite
A-DA-206 Revision A	11/9/20	Chrofi Archite
A-DA-208 Revision A	11/9/20	Chrofi Archite
A-DA-301 Revision A	11/9/20	Chrofi Archite
A-DA-302 Revision A	11/9/20	Chrofi Archite
A-DA-303 Revision A	11/9/20	Chrofi Archite
A-DA-304 Revision A	11/9/20	Chrofi Archite
A-DA-305 Revision A	11/9/20	Chrofi Archite
Soil and Sediment Management Plan Project no. 20217 Drawing No. SS01 Issue P2	July 2020	Michael Frost
Soil and Sediment Management Plan Project no. 20217 Drawing No. SS02 Issue P2	July 2020	Michael Frost
Soil and Sediment Management Plan Project no. 20217 Drawing No. SS03 Issue P2	July 2020	Michael Frost

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate A378857_03	21 October 2020	ECOMODE Design
Geotechnical Assessment and Risk Analysis Ref: 1368-B	14 July 2020	D. Katauskas Consulting Geotechnical Engineer
Aboriginal Impact Assessment Report Ref No RTC-8320	10 August 2020	Rain Tree Consulting
Biodiversity Development Assessment Report File Number: 15ORBDAR01	17 September 2020	GIS Environmental Consultants
Construction Traffic Management Plan	1 August 2020	PCM Projects Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A-DA-106 Revision A	11/9/20	Chrofi Architects

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
A-DA-014 Revision A	11/9/20	Chrofi Architects
Northern Beaches Council Waste Management Plan	28/07/20	Chrofi Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	Not dated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the

erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater



- management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,424.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$942,425.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### 6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying

Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

**7. On slab landscape works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

**8. Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

9. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The proposed increased height of the roof is not approved. The roof / parapet height must not be raised higher than the existing roof heights.
- The proposed front wall is to be a maximum height of 1.8m above ground level.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises impacts on views and is consistent with the desired streetscape character.

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. **Materials, finishes and external colour scheme**

Proposed materials and finishes and the colour scheme should be provided prior to any approval. Details demonstrating compliance with this condition to be submitted to the Council's Heritage Advisor's satisfaction.

Reason: To preserve the significance of the heritage items within the vicinity.

12. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:  
i) increase Landscape Plan to show and provide further information regarding proposed planter boxes on the first floor as indicated on the Architectural Plans.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: landscape amenity.

13. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public

foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

14. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

15. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction impact mitigation measures specified in Section 7.2 of the Biodiversity Development Assessment Report (GIS Environmental Consultants), Part 7 of the Construction Noise and Vibration Management Plan (Acoustic Studio, September 2020), and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

**Reason:** To confirm compliance with wildlife and habitat protection/replacement measures.

17. **Installation and maintenance of sediment and erosion control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.



Reason: to protect the surrounding environment from the effects of sedimentation and erosion from the site.

**18. Works on Land owned or managed by Council**

No works are to be carried out on Land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

**19. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

**20. Nest Box Installation**

At least two nest boxes designed to suit Little Penguins are to be installed within an appropriate location on site in accordance with best practice, prior to commencement of high impact works (i.e. demolition and excavation). Nest box installation is to be undertaken by the Project Ecologist and compliance with this condition is to be certified by the Project Ecologist prior to any Occupation Certificate.

**Reason:** To provide additional safe sheltering habitat for Little Penguins during and after construction.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**21. Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

**22. No access through Land owned or managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council, without the written approval of Council.



Reason: public safety, landscape amenity and tree protection.

**23. Protection of Councils Public Assets**

Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance. Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately Contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: to protect and/or restore any damaged public asset.

**24. Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken

using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:

i) 1.4 Minimising of Development Impacts.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

## 25. **Protection of rock and sites of significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

## 26. **Pre-clearance Survey Required – Penguin and Bandicoot Habitat**

A pre-clearance survey for Little Penguin and Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Little Penguins or Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

**Reason:** To avoid injury or death of Little Penguins or Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

## 27. **Construction and Waste Access**

Delivery of construction materials and removal of waste is to be via Addison Road and not via water while penguins are occupying the site. Compliance with this condition is to be certified by the Project Ecologist prior to any Occupation Certificate.

**Reason:** To prevent death or injury to penguins and chicks during breeding, moulting and/or loafing activities.

28. **Compliance with Ecologist Recommendations - During Construction**

All during-construction impact mitigation measures specified in Section 7.2 of the Biodiversity Development Assessment Report (GIS Environmental Consultants), Part 7 of the Construction Noise and Vibration Management Plan (Acoustic Studio, September 2020), and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

**Reason:** To confirm compliance with wildlife and habitat protection/replacement measures.

29. **Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

**Reason:** To prevent impacts to Long-nosed Bandicoots and Little Penguins in accordance with the Biodiversity Conservation Act 2016.

30. **Protect AOBV – Penguin Habitat**

The Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat), including rocky cliff and intertidal areas below the formed backyard, are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas.

**Reason:** To prevent impacts to Little Penguins and the adjoining Area of Outstanding Biodiversity Value.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE**

31. **Landscape completion**

Landscaping is to be implemented in accordance with the approved amended Landscape Plan.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

**Reason:** environmental amenity.

32. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during

- excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

33. **Compliance with Ecologist's Recommendations – Post Construction**

All post-construction impact mitigation measures specified in Section 7.2 of the Biodiversity Development Assessment Report (GIS Environmental Consultants), Part 7 of the Construction Noise and Vibration Management Plan (Acoustic Studio, September 2020), and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with this condition is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to any Occupation Certificate.

**Reason:** To confirm compliance with wildlife and habitat protection/replacement measures.

34. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

35. **Removal of all temporary structures/materials and construction rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: to protect reserve amenity and public safety.

36. **Geotechnical Issues**

Following construction activities provide Council with a geotechnical report that has investigated the stability of the site and provided an assessment of any new landslip hazards prior to the issue of an occupation certificate.

Reason: To ensure works are undertaken in an appropriate manner.

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**



37. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new on slab landscape works, establish an on-going landscape maintenance plan that shall be submitted to the Certifying Authority that aims to monitor and replenish soil levels annually as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: to maintain local environmental amenity.

38. **Companion Animals Prohibited in AOBV**

In accordance with Section 3.4 of the NSW Biodiversity Conservation Regulation 2017, companion animals (including cats and dogs) are not permitted within the Little Penguin declared area. Cats and dogs are to be prevented from entering the area below the cliff top at all times.

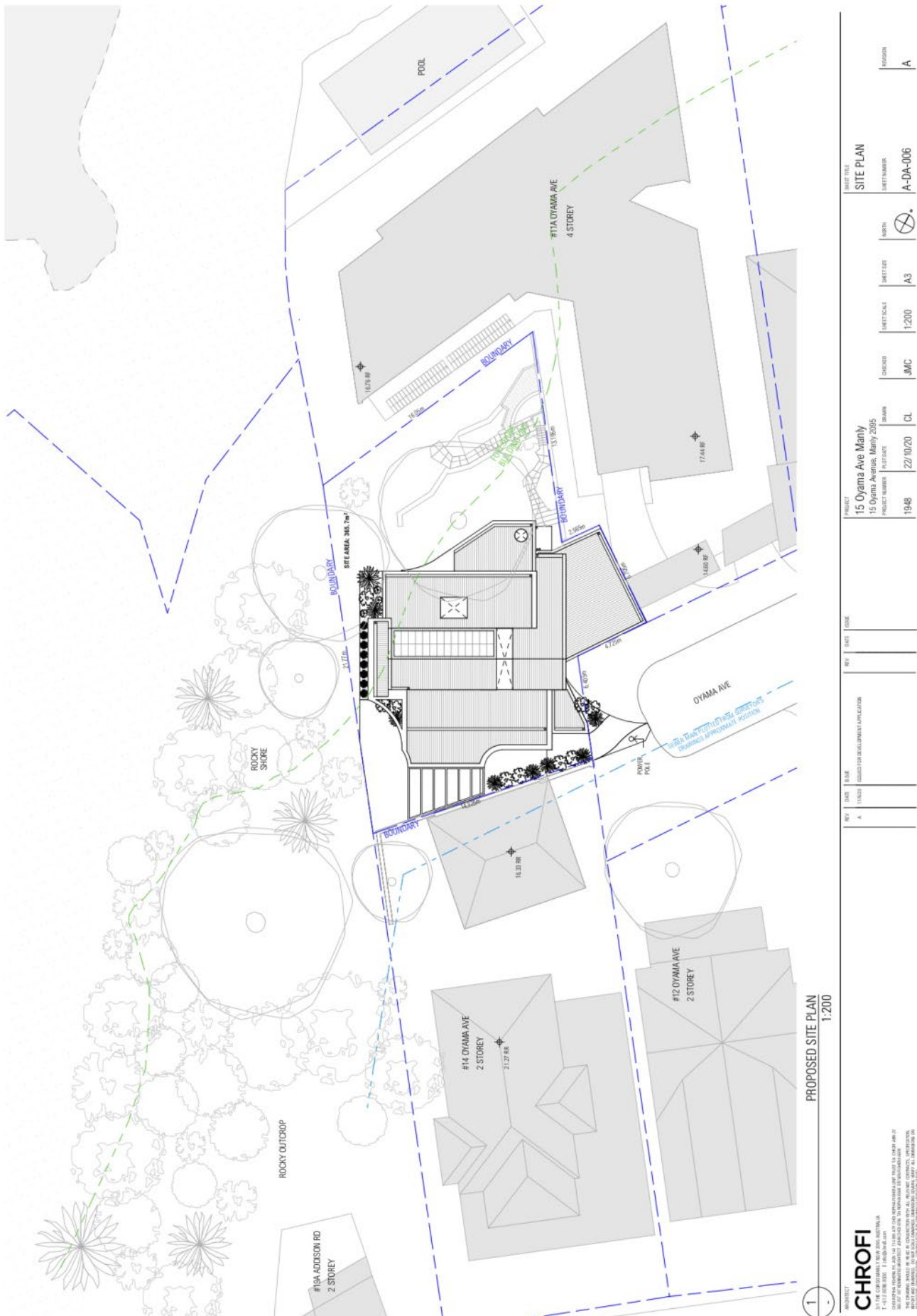
**Reason:** To prevent predation of or injury to Little Penguins utilising the area below the cliff top.

39. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

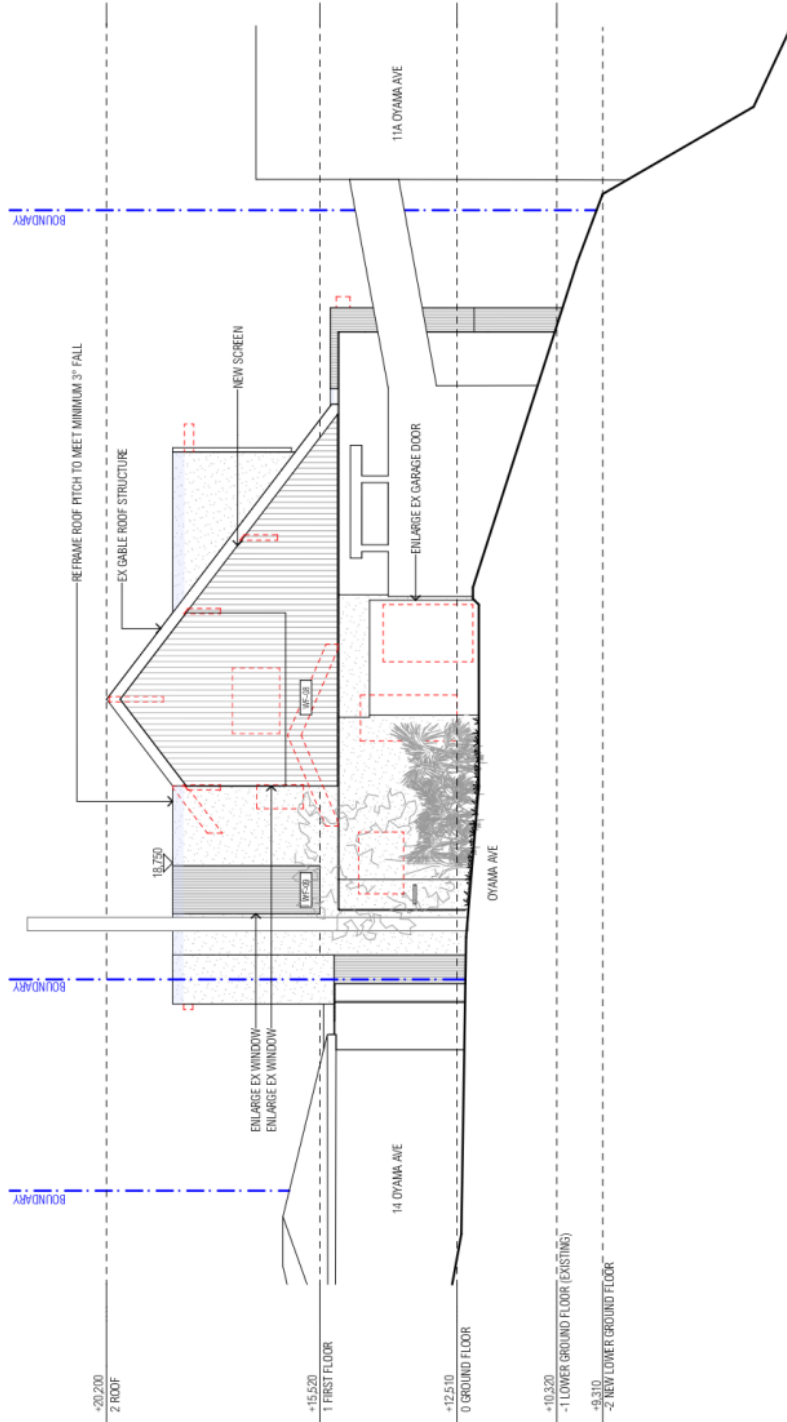
**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.





MAKE GOOD ALL RETAINED EXISTING WALLS

DEMOLITION  
NEW ADDITION



PROPOSED EAST ELEVATION  
1:100

MAJOR PLANTING REMOVED  
FROM DRAWING FOR CLARITY

**CHROFI**  
ARCHITECT  
25-741 EGGHARVEY RD, SUITE 200, AUSTIN, TX 78741  
T: 412 808 8800 F: 412 808 8801  
WWW.CHROFI.COM

REV DATE ISSUE  
A 15/03/21 ISSUED FOR DEVELOPMENT APPLICATION  
B 17/03/21 ISSUED FOR DEVELOPMENT APPLICATION

REV DATE ISSUE

PROJECT  
15 Oyama Ave Manly

PROJECT NUMBER 1948  
DATE 1/28/2021  
DRAWN CL

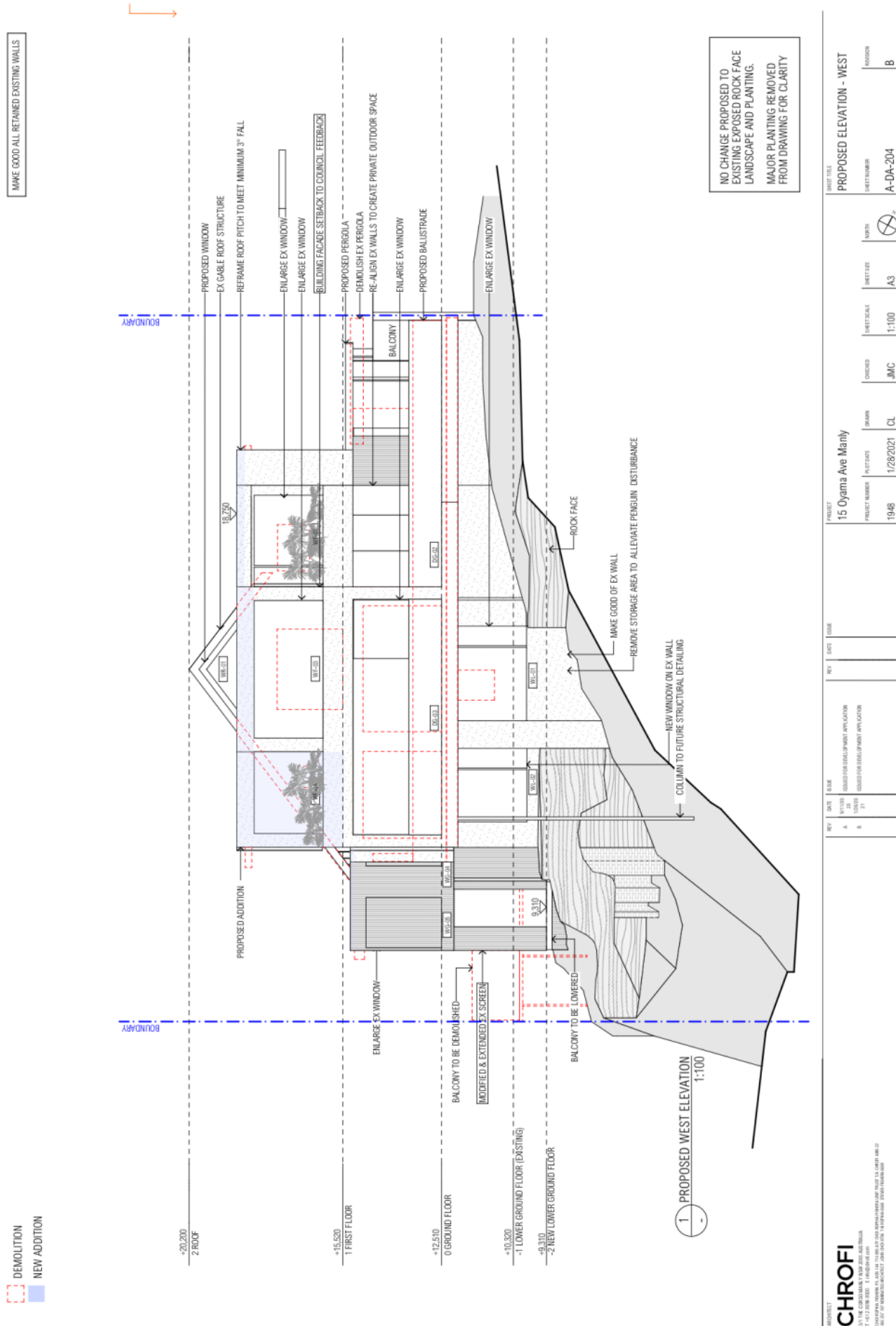
CHECKED JMC

SHEET SCALE 1:100

SHEET SIZE A3

ORIENT NORTH

SHEET TITLE  
PROPOSED ELEVATION - EAST  
SHEET NUMBER A-DA-202  
REGION B



DEMOLITION  
NEW ADDITION



**CHROFI**

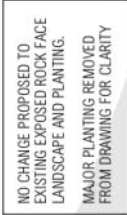
REV	DATE	REASON
A	04/11/05	ISSUED FOR DEVELOPMENT APPLICATION
B	10/08/05	ISSUED FOR DEVELOPMENT APPLICATION

REV	DATE	ISSUE

PROJECT	PROJECT NUMBER	PLOT DATE	GRASS
15 Oyama Ave Manly	1948	1/28/2021	CL

SHEET TITLE	PROPOSED ELEVATION - SOUTH		
SHEET SCALE	1:100	SHEET SIZE	A3
		NORTH	
		SHEET NUMBER	A-DA-206
		REGION	B

MAKE GOOD ALL RETAINED EXISTING WALLS

[illegible]



**Appendix B – Clause 4.6 variation – building height**

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Address: 15 Oyama Avenue, Manly

Proposal: Alterations and additions to an existing dwelling house.

**1. Manly Local Environmental Plan 2013 (“MLEP”)**

**1.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP specifies the following objectives for the R1 zone:

- \* *To provide for the housing needs of the community.*
- \* *To provide for a variety of housing types and densities.*
- \* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is for the purpose of a dwelling house which is a permissible use in the R1 zone.

**1.2 Clause 4.3 – Building Height**

Clause 4.3 of MLEP sets out the building height development standard as follows:

*(1) The objectives of this clause are as follows:*

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
  - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing*

*vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

1.3 The maximum building height permitted on the land is 8.5 metres.

1.4 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines “building height” and “ground level (existing)” as:

***building height (or height of building) means:***

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

***ground level (existing) means the existing level of a site at any point.***

1.5 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.3 (the building height development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the building height development standard pursuant to clause 4.3 of MLEP which specifies a building height of 8.5 metres however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive

opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition of satisfaction requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and may assume the concurrence of the Secretary under cl 4.6(4)(b). Nevertheless, the Council should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGRA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

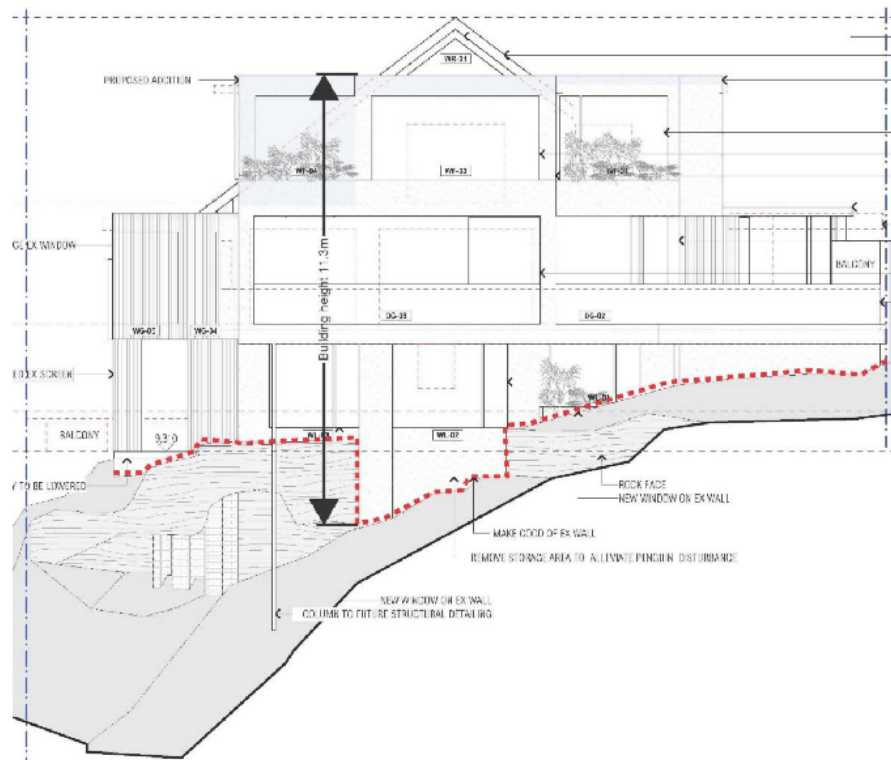
Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.7(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

## 2. The Nature and Extent of the Variation

- 2.1 This request seeks a variation to the building height development standard contained in clause 4.3 of MLEP.
- 2.2 Clause 4.3(2) of MLEP specifies a maximum building height for development on the subject site of 8.5 metres.
- 2.3 The proposal exceeds the building height control in clause 4.3(2) of MLEP 2013. The elements of the proposal that breach the control are the tops of the secondary roof elements. The main roof form and roof ridge is unchanged.
- 2.4 The existing building has a maximum building height of 11.9m measured to the top of the roof ridge. No works are proposed to the main roof form so the development

does not encompass this existing non-compliance and no variation to the control is required to retain the existing main roof.

- 2.5 The proposed works have a maximum building height of 11.3m which occurs at the north-western corner of the master bedroom at the upper level of the building. The measurement of the proposed building works that has the maximum building height is shown in the following diagram:



### 3. Relevant Caselaw

- 3.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29] as follows:
13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
  14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for*



development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

15. *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect*

*general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
25. *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*
26. *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the*

*matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*

27. *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
  28. *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
  29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*
- 3.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of MLEP a development standard?
  2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
    - (a) compliance is unreasonable or unnecessary; and
    - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
  3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R1 zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Has the consent authority considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

#### 4. Request for Variation

##### 4.1 Is clause 4.3 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:  
  
*“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work”*
- (b) Clause 4.3 of MLEP relates to the height of a building and, accordingly, clause 4.3 is a development standard.

##### 4.2 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1<sup>st</sup> way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:  
  
*(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

The proposed development retains the existing building height and roof form of the dwelling house. The form of the main pitched and gabled roof is retained and extends above the secondary roof form. The secondary roof form is also maintained but the proposed works include alterations to this roof form for aesthetic and practical reasons.

Because the built form is essentially unchanged from that which exists the development maintains the prevailing building height and desired streetscape character of the locality.

This objective is achieved.

- (b) to control the bulk and scale of buildings,*

The proposal will result in a building which has essentially the same building bulk as that which exists. The additional wall height is offset by the proposed removal of existing built elements, including the western terrace which encroaches over the neighbouring property (19A-21 Addison Road), the southern dining room on the ground floor, and parts of the existing timber balcony and walkway at the lower ground floor level.



The bulk of the building is also reduced through the introduction of planter boxes at the upper level of the building and the pulling back of the western wall of the master bedroom by 500mm.

This objective is achieved.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),

The proposed breaches of the building height control have no impact on views to nearby residential development from public spaces. The proposal also retains existing vegetation to soften and screen views to existing residential development, including the subject site and the neighbouring residential flat building, as shown in the following photomontages prepared by the project architects. This objective is achieved.



- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),

The proposed breaches of the building height control have no impact on public and private views because they are located on a part of the building that do not impede sight lines as shown in the following diagram. This objective is achieved.





- (iii) *views between public spaces (including the harbour and foreshores),*

The proposal does not result in any disruption to views between public spaces. There are no existing views from Oyama Avenue to the harbour and foreshore as a result of the existing siting of buildings. This objective is achieved.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

As discussed in the body of the Statement of Environmental Effects, the proposal retains solar access to neighbouring properties in excess of the requirements of the MDCP 2013.

The proposal does not result in any additional overshadowing of public places.

This objective is achieved.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The site is not in a recreation or environmental protection zone. This objective is achieved.

#### 4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply

with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”* (emphasis added)

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

The variation to the development standard does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in significantly enhanced amenity for the proposed dwelling house.

Additionally, the variation to the development standard does not result in additional impacts on the streetscape as the existing streetscape presentation is maintained and improved through streetfront planting.

The form of the development, its appearance and its height are entirely consistent with the existing character of the area which generally reflects an eclectic mix of dwelling types including dwelling houses, duplexes, and apartment buildings ranging in height from 2 storeys to 8 storeys.

The design approach is to carry out alterations and additions that are almost entirely within the existing building envelope. This design approach minimises impacts on existing significant landforms and vegetation. It also minimises impacts on threatened species and critical habitats which is particularly relevant considering the proximity of nesting little penguins to the site. A compliant development could be achieved by siting the building down the site and particularly on the northern part of the site but this would have significantly greater environmental impacts on existing landforms, vegetation and fauna. By retaining the existing building envelope and upgrading the existing building these environmental impacts are avoided.

The proposed parts of the development that breach the building height control beyond the existing breaches are to upgrade and enhance the appearance of the building, being those parts of the building under the secondary roof form. They have been architecturally designed and bring a degree of consistency to the presentation of the building which currently suffers from a history of incremental development and design philosophies.

The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

**4.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R1 General Residential zone?**

- (a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clause 4.3. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.

- (b) Each of the objectives of the R1 zone and the reasons why the proposed development is consistent with each objective is set out below:

\* *To provide for the housing needs of the community.*

The dwelling house provides for the housing needs of members of the community.

\* *To provide for a variety of housing types and densities.*

The dwelling house complements and contributes to the mix of dwelling types in the locality which includes dwelling houses, duplexes, and apartment buildings ranging in height from 2 storeys to 8 storeys.

\* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective is not relevant to the proposal.

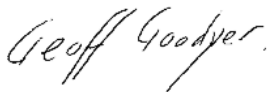
#### **4.5 Has council obtained the concurrence of the Director-General?**

Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation pursuant to the Assumed Concurrence notice issued on 21 February 2018.

#### **4.6 Has Council considered the matters in clause 4.6(5) of MLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is particular to the design of the proposed alterations and additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standards is reasonable and appropriate in the circumstances of the case.



Geoff Goodyer  
22 October 2020

**Appendix C – Clause 4.6 variation – floor space ratio**

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Address: 15 Oyama Avenue, Manly

Proposal: Alterations and additions to an existing dwelling house.

**1. Manly Local Environmental Plan 2013 (“MLEP”)**

**1.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP specifies the following objectives for the R1 zone:

- \* *To provide for the housing needs of the community.*
- \* *To provide for a variety of housing types and densities.*
- \* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is for the purpose of a dwelling house which is a permissible use in the R1 zone.

**1.2 Clause 4.4 – Floor space ratio**

Clause 4.4 of MLEP sets out the floor space ratio development standard as follows:

- (1) *The objectives of this clause are as follows—*
  - (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
  - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
  - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
  - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
  - (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50%*

*of the gross floor area of the building will be used for the purpose of commercial premises.*

- 1.3 The maximum floor space ratio permitted on the land is 0.6:1.
- 1.4 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines “floor space ratio”, “site area” and “gross floor area” as:

**floor space ratio** – see clause 4.5.

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes –

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

**site area** means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan.

*Note. The effect of this definition is varied by clause 4.5 for the purpose of the determination of permitted floor space area for proposed development.*

Clause 4.5 of MLEP provides:

- (1) **Objectives** The objectives of this clause are as follows—
  - (a) to define floor space ratio,
  - (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to—
    - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
    - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and



- (iii) require community land and public places to be dealt with separately.
- (2) **Definition of “floor space ratio”** The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.
- (3) **Site area** In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—
  - (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
  - (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

[Note: subclauses 4-7 are not relevant to the subject site]

#### 1.5 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.4 (the floor space ratio development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the floor space development standard pursuant to clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.6:1 however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is

proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition of satisfaction requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and may assume the concurrence of the Secretary under cl 4.6(4)(b). Nevertheless, the Council should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.7(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

## 2. The Nature and Extent of the Variation

- 2.1 This request seeks a variation to the floor space ratio development standard contained in clause 4.4 of MLEP.
- 2.2 Clause 4.4(2) of MLEP specifies a maximum floor space ratio for development on the subject site of 0.6:1.
- 2.3 The proposal exceeds the floor space ratio control in clause 4.4(2) of MLEP 2013. The elements of the proposal that result in a breach of the control are those located within the existing building envelope at the lower ground floor area and a minor extension to the master ensuite at the first floor level. These elements are offset by a reduction in the western extent of the existing master bedroom on the first floor level and the removal of part of the existing dining room on the ground floor level.
- 2.4 The existing building has a floor space ratio of 0.74:1 and a gross floor area of 269.95m<sup>2</sup>. The proposal results in a building with a floor space ratio of 0.72:1 and a

gross floor area of 263.04m<sup>2</sup>. Details of the calculation of gross floor area are shown on Drawing A-DA-602.

- 2.5 The nature of the proposed breach is such that the building has a reduced bulk and scale when compared to the existing building. The gross floor area and floor space ratio are being reduced. The removal of part of the dining room on the northern side of the dwelling house on the ground floor level reduces the apparent bulk and scale of the building.

### 3. Relevant Caselaw

- 3.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29] as follows:
  13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
  14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*
  15. *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
  16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*
  17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the*



*objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the*



development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

25. The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
26. The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
27. The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
28. The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*

3.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the R1 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Has the consent authority considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

#### 4. Request for Variation

##### 4.1 Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:
 

*“(d) the cubic content or floor space of a building”*
- (b) Clause 4.4 of MLEP relates to the floor space of a building and, accordingly, clause 4.4 is a development standard.

##### 4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1<sup>st</sup> way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the floor space ratio standard and reasoning why compliance is unreasonable or unnecessary is set out below:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

The proposed development reduces the existing building envelope of the dwelling house because the additional floor space is principally located within the sub-floor area, which is within the existing building envelope, and the removal of part of the dining room on ground floor level and master bedroom on first floor level reduces the building envelope.

The proposal reduces the gross floor area and floor space ratio of the building, which indicates a reduction in the bulk and scale of the building.

Because the building envelope is reduced from that which exists the development results in a lesser bulk and scale and remains consistent with the desired streetscape character of the locality.

This objective is achieved.

- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

The reduction in the building envelope and floor space ratio described above ensures that the proposal does not obscure important landscape and townscape features. This objective is also achieved because the proposal does not seek to change the siting of the building on the allotment so all existing sight lines are retained.

This objective is achieved.

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Because the built form is essentially unchanged from that which exists the development maintains the prevailing bulk, scale and siting of development and desired streetscape character of the locality.

This objective is achieved.

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

The proposed development will improve the amenity of neighbouring residents and the public domain. This is achieved because, with regards to floor space ratio, the apparent bulk and scale of the building is reduced through the removal of part of the dining room and the pulling back of the master bedroom, the introduction of softening elements in the design (ie: planter boxes on the upper level) and the architectural cohesion achieved by the design to redress the eclectic mix of styles evident as a result of the history of development of the existing dwelling house.

This objective is achieved.

- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

This objective is not relevant to the proposal as the site is not within a business zone.

**4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes for and from development by allowing flexibility in particular circumstances.” (emphasis added)*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

The variation to the development standard does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in significantly enhanced amenity for the proposed dwelling house.

Additionally, the variation to the development standard does not result in additional impacts on the streetscape as the existing streetscape presentation is maintained and improved through streetfront planting.

The proposal results in a reduction in the gross floor area and the floor space ratio of the development, with consequential reductions in bulk and scale and the impacts that arise from bulk and scale.

The form of the development, its appearance and its bulk and scale are entirely consistent with the existing character of the area which generally reflects an eclectic mix of dwelling types including dwelling houses, duplexes, and apartment buildings that have been constructed over various periods of time in various styles.

The design approach is to carry out alterations and additions that are almost entirely within the existing building envelope. This design approach minimises impacts on existing significant landforms and vegetation. It also minimises impacts on threatened species and critical habitats which is particularly relevant considering the proximity of nesting little penguins to the site. A compliant development could be achieved by siting the building down the site and particularly on the northern part of the site but this would have significantly greater environmental impacts on existing landforms, vegetation and fauna. By retaining the existing building envelope and upgrading the existing building these environmental impacts are avoided.



The proposed parts of the development that breach floor space ratio control beyond the existing breaches are to upgrade and enhance the amenity and liveability of the building, being those parts of the building within the existing sub-floor area. They have been architecturally designed and their location within the sub-floor area is such that they are difficult to perceive from views to the site from neighbouring properties or the public domain.

The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

**4.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R1 General Residential zone?**

- (a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clause 4.4. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.
- (b) Each of the objectives of the R1 zone and the reasons why the proposed development is consistent with each objective is set out below:
  - \* *To provide for the housing needs of the community.*

The dwelling house provides for the housing needs of members of the community.
  - \* *To provide for a variety of housing types and densities.*

The dwelling house complements and contributes to the mix of dwelling types in the locality which includes dwelling houses, duplexes, and apartment buildings in a range of styles and ages.
  - \* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective is not relevant to the proposal.

**4.5 Has council obtained the concurrence of the Director-General?**

Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation pursuant to the Assumed Concurrence notice issued on 21 February 2018.

**4.6 Has Council considered the matters in clause 4.6(5) of MLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is particular to the design of the proposed alterations and additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.



- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standards is reasonable and appropriate in the circumstances of the case.



Geoff Goodyer  
22 October 2020

**ITEM 3.5**

**DA2020/1072 - 1 DREW PLACE BELROSE - CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT, INCLUDING DEMOLITION WORKS, NEW ACCESS DRIVEWAY AND FRONT FENCE**

**REPORTING MANAGER**

**TRIM FILE REF** 2021/163442

**ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to DA2020/1072 for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence on land at Lot 1 DP 228962 & Lot 2 DP 228962, 1 Drew Place, Belrose, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1072
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 1 DP 228962, 1 Drew Place BELROSE NSW 2085 Lot 2 DP 228962, 1 Drew Place BELROSE NSW 2085
<b>Proposed Development:</b>	Construction of a Seniors Housing development, including demolition works, new access driveway and front fence
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under Pursuant to SEPP (HSDP)
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Newpro 19 Pty Ltd
<b>Applicant:</b>	Newpro 19 Pty Ltd
<b>Application Lodged:</b>	03/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	11/09/2020 to 25/09/2020
<b>Advertised:</b>	11/09/2020
<b>Submissions Received:</b>	9
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 2,441,219.00

### EXECUTIVE SUMMARY

The application seeks consent for the construction of six (6) independent living units with six (6) garages under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (HSPD) 2004. Under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is within the R2 Low Density Residential zone. The proposed development is defined as Seniors Housing, which is prohibited under the WLEP 2011, however, the proposal is made permissible by virtue of SEPP (HSPD) 2004.

The application was referred to the Design Advisory and Sustainability Panel (DSAP) who commend the design as a compliant scheme that achieves good internal and external amenity for the future

occupants while respecting neighbouring amenity. The design is well articulated and the massing modulated to be consistent with the character of the area which includes detached one and two story dwelling and a medium density Seniors Housing development to the immediate south. The building is setback from all boundaries with substantial deep soil zones to support screen planting which will help integrate the development and reduce any perceived visual bulk.

The proposal generally complies with all built form controls and the minor breach of the controls are supported including the clause 4.6 variation to the SEPP rear 25% single storey zone with a 4.4% breach of the control relating to a small section of a wall to a study and ensuite to Unit 5.

The public exhibition of the application resulted in 8 unique submissions, which raised concerns with the density, design, car parking and privacy concerns. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

On balance, the assessment of the proposed seniors housing development on this site against the applicable planning controls and related legislation reveals that subject to conditions the proposal satisfies the controls and the application is therefore recommended for approval.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for the demolition of all structures and the construction of a Seniors Housing development comprising six (6) x two (2) bedroom infill self care housing units and at grade parking for 6 vehicles pursuant to the provisions of SEEP (Housing for Seniors or People with a Disability (HSPD)). In detail, the proposal provides:

### **Ground Floor RL 164**

#### Three (3) units No 1 - 3 comprising:

- Two bedrooms (Bed 1 has an ensuite);
- Open Plan living, dining and kitchen;
- Study, laundry and bathroom;
- Entry hall;
- Private courtyard;
- Single garage

#### Parking, access, servicing and landscaping

- Four(4) garages access via Drew Place;
- Driveway and pedestrian access via Drew Place;
- Integrated lift and stair access;
- Bin store adjacent to Drew Place driveway;
- OSD Tank below ground;
- Removal of 17 trees;
- Replacement planting;
- White aluminium 1.6m high boundary fence;
- Part stone boundary wall, pedestrian gate with stone pillar and building identification.
- Timber pergola to entry.

### **First Floor RL 167.05**

#### Three (3) units No 1 - 3 comprising:

- Two bedrooms (Bed 1 has an ensuite);
- Open Plan living, dining and kitchen;
- Study, laundry and bathroom;
- Entry hall;
- Private balconies and
- Solar panels on roof.

### **Materials**

External walls face brick (bowral blue Austral brick), cement render, aluminium powder coated white windows, doors, balustrades and screens, tiled (slate look) dark grey tiled roof and metal sheet roof.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - B9 Rear Boundary Setbacks  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 228962 , 1 Drew Place BELROSE NSW 2085 Lot 2 DP 228962 , 1 Drew Place BELROSE NSW 2085
<b>Detailed Site Description:</b>	The development site, which comprises Lot 1 and 2 No 1 Drew Place, is located at the intersection of Pringle Avenue (primary frontage) and Drew Place (secondary frontage) and has a consolidated site area of 1395.2sqm.



The site is regular in shape with a frontage of 36.8m along Drew Place, 29.3m along Pringle Avenue and a depth of between 29.3m and 36.4m

The site is located within the R2 zone from WLEP 2011 and accommodates a single storey detached dwelling with vehicular access to both street a double garage is located to the Pringle Avenue frontage and a carport to Drew Place.

The site is generally flat and devoid of any significant landscape features. A timber boundary fence provides the boundary treatment to the rear (north) and a breeze block fence the boundary treatment to the east.

#### **Detailed Description of Adjoining/Surrounding Development**

Surrounding development consists primarily of one and two storey detached dwellings with the exception of a two storey Senior's Housing development which has been constructed to the south on the opposite side of Drew Place at No. 36 Pringle Avenue and Frenchs Forest Showground / Oval located to the west on the opposite side of Pringle Avenue.

Map:



#### **SITE HISTORY**

Pre-lodgement Meeting (PLM) was held on 26 March 2020 in relation to the development of this site for seniors housing. The proposal sought to demolish the existing structures and construct a two storey building containing six (6) x three (3) bedroom units with six (6) at grade garages with access via Drew Place.

The design as proposed at the PLM raised issues with respect to a breach of the rear 25% single storey

SEPP control, privacy issues with balconies overlook neighbours yards to the north and east, more articulation required to reduce the bulk and scale and allow a greater transition to existing built form and additional landscaping required especially along the eastern boundary. In summary, based on the proposal as proffered, the scheme was not supported and required design amendments. The PLM urban design advice has been incorporated into the current proposal and there are therefore no urban design or landscape issues subject to conditions.

On 1 March 2021, amended plans were received which reduced the extent of the perola over the upper floor balcony to Unit 5.

### 36 Pringle Avenue

On 13 July 2016, DA2016/0249 approved demolition works and the construction of in-fill self-care housing Six (6) Units pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, landscape works and strata subdivision.

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/09/2020 to 25/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Kylie Joanne Pandey	5 Drew Place BELROSE NSW 2085
Prudence Joan Wright	7 Drew Place BELROSE NSW 2085
Mr Benedetto Daniele Bruno	23 Glen Street BELROSE NSW 2085
Mr Varoujan John Hajakian	42 Pringle Avenue BELROSE NSW 2085
Mrs Therese Hajakian	42 Pringle Avenue BELROSE NSW 2085
Glenn Robert Hinson	40 Pringle Avenue BELROSE NSW 2085
Karen Mathieson	Address Unknown
Yi Zhou	Address Unknown
Mr Craig Stephen Dobson	9 Evelyn Place BELROSE NSW 2085

Eight (8) unique submissions have been received noting that two (2) submissions have been received from one property.

The following issues were raised in the submissions and each have been addressed below:

- Occupancy of SHPD's;
- Parking and traffic issues;
- Over-development, and
- Out of character with the area.

The matters raised within the submissions are addressed as follows:

- **There are issues with the existing Seniors Housing at No. 36 Pringle Road including families living in the development and residents parking in the street. There is a concern that the proposed development will result in similar issues.**

Comment:

In response to issues with the occupancy of the development a condition will require a positive covenant to be registered on title requiring the occupation of the HSPD development to be seniors or people with a disability, people who live in the same household as seniors or staff employed to assist in the administration of and provision of services to such seniors or disabled. Such a condition will be consistent with the SEPP (HSPD).

- **The road is unsafe to enter via Drew Place, it is too narrow and access should be via Pringle Road. Insufficient car parking especially given the traffic congestion in the area and issues with on street parking. The plans are annotated to reference some rooms as**



**study. There is a concern that these rooms will become bedrooms which will result in insufficient parking**

Comment:

Given the low (minimal) level of traffic generated by the proposal the location of the vehicular access via Drew Place has been assessed by Council's Transport Unit as acceptable. The proposal provides a compliant amount of parking. The study has been designed to be an open room which is directly connected to the open plan living room. A condition is recommended to ensure that the study cannot be closed so as to ensure that it cannot be used as a bedroom which would otherwise trigger a requirement for additional parking.

- **Over-development the development should be reduced to 4 units.**

Comment:

The proposal complies with the built form controls in terms of height, density (FSR), envelopes, landscape open space and private open space. As such, it is not considered reasonable or necessary to reduce the density of the development from six (6) units to four (4).

- **The bulk and scale of the units are out of character with the single dwelling houses in the area and will set an unsympathetic precedent. The size of the building is excessive and does not respect the desirable elements of the location / character. A town house structure is more suitable with living areas at ground level and bedrooms on the upper floors.**

Comment:

As noted above, the proposal generally complies with the built form controls. The development is well articulated to reduce the mass of the development to ensure that it respects the character of the surrounding area which is noted to include a two storey SHPD development on the opposite side of the Drew Place to the south. The facades are articulated and the mass of the building is broken up so that the development presents as a town house development. In addition, large areas of deep soil planting are retained around the perimeter of the development which will ensure that the perceived bulk and scale of the development is reduced from the street. A condition requires an amended landscape plan which shall provide for additional planting along the street frontages.

- **Visual privacy issues, units overlook neighbouring properties and private open space, especially the upper floor apartments with living areas looking down on neighbours. Unit 6 (second story, north facing) is of particular concerns as there is a large terrace and living area that overlooks the neighbours private open space.**

Comment:

The proposal provides a sufficient setback of the upper floor to the neighbouring rear gardens generally in compliance with the SEPP set back requirements. There is a minor breach of the setback to the balcony and ensuite and study of Unit 5, however, the minor breach will not result in any unreasonable visual and acoustic privacy issues to No. 40 Pringle Avenue to the immediate north, refer to the detailed discussion under clause 4.6.

The upper floor balcony to Unit 6 is located 8.4m from the northern boundary and the proposed living room window is located 10m from the northern boundary. A detached studio is located within the corner of No. 9 Evelyn Place with a pool and deck located beyond this approximately 10m to 16m from the common boundary. Given the 8.4m setback of the balcony to boundary and the location of the primary area of private open space to No. 9 Evelyn Place it is not anticipated that the proposal will result in unreasonable visual and acoustic privacy impacts to the neighbour. It is noted that the Design Advisory Panel suggested that planters be provided along the edge of the balcony to help enhance visual privacy between neighbours. A condition has been included to this effect. Refer to further discussion under Clause D8 of this report.



- **Acoustic privacy issues with elevated second storey units living increases noise impacts. Noise from lift and noise as a result of increased traffic in Drew Place.**  
Comment:  
 Given the setback of the development to neighbouring properties it is not anticipated that there will be acoustic impacts as a result of the upper floor apartments or the operation of the lift. A standard condition is recommended that requires noise from plant (the lift) to be controlled so that it will not impact on neighbouring residents.
- **Units contravene the land use zoning / planning controls. The building (unit 5) exceeds the single storey height limit prescribed in the Seniors Housing SEPP.**  
Comment:  
 It is acknowledged that the development relies on the SEPP (HSDP) for the principle of the use as it is located within the R2 Low Density Residential zone. It is also noted that there is a minor breach of the single storey height limit within the rear setback. The applicant has submitted a clause 4.6 variation for this breach which has been assessed as acceptable, refer to clause 4.6 variation section of this report.
- **Safety issues with seniors having to access a high traffic intersection in order to gain access to the shops / bus stop with no zebra crossing.**  
Comment:  
 An access report has been submitted in support of the application and Council's Engineers raise no safety issues with access to the bus stops.
- **It is proposed to plant a new tree which would result in impacts to the neighbouring property. It is requested that the tree be moved to the east to the corner of the courtyard between unit 2 and 3. This would create some more privacy for us and not damage our property.**  
Comment:  
 The tree in question is a small tree with limited to low growth potential. A condition is included in the recommendation that requires all trees to be setback 2m from boundaries. Subject to this condition and given that the tree is a small species it is not anticipated that the tree will cause any structural issues to the property to the north.
- **The development may impact surrounding properties that are listed as being located within a flood zone. Consideration must be given to the retention of water and overflow to surrounding homes.**  
Comment:  
 The proposed seniors living development is located above the Flood Planning Level and Probable Maximum Flood level relevant for the site. The subject allotment is also not impacted by the Probable Maximum Flood extent. No flood related development controls applied.
- **The retaining wall between our No. 40 Pringle Avenue and the site has not been considered in any geotechnical surveys. The wall is currently leaning, and the breeze blocks are not in a sound condition. The developer would need to consider the removal and replacement of the retaining wall and fence. This would also require the removal of a living cypress pine tree, indicated as a "stump" on the plan. This tree is currently a support mechanism for the failing fence.**  
Comment:  
 The applicant will be responsible for replacing any existing boundary fencing which may be damaged by the proposal. Consent will be required for the removal of any trees which are located outside the subject site.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application proposes the construction of a seniors housing development incorporating 6 x 2 bedroom in-fill self-care housing units and at-grade car parking for 6 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).</p> <p>In the landscape assessment of this application, consideration of the submitted Landscape Documents prepared by APLD Landscape Design, and the Arboricultural Impact Assessment prepared by Hugh The Arborist is assessed for compliance with the following relevant controls and policies:</p> <ul style="list-style-type: none"> <li>• Housing for Seniors or People with a Disability: clause 33 Neighbourhood amenity and streetscape,</li> <li>• Seniors Living Policy: clause 2. Site Planning and Design - deep soil zone of 15% with minimum dimension of 3 metres; and clause 3. Impacts on Streetscape - retain trees on the street and in front and rear setbacks to minimise impact on the streetscape and neighbours,</li> <li>• Warringah DCP Controls: D1 Landscaped Open Space and Bushland Setting, D9 Building Bulk, and E1 Preservation of Trees and Bushland Vegetation.</li> </ul> <p>The existing landscape site character is of a relatively flat site with no existing significant trees nor landscape features. Existing vegetation consists of small trees not protected by DCP controls (ie. not over 5 metres in height), shrubs and hedges in maintained gardens and extensive lawn areas. All existing trees within the site are Exempt Species and the Arboricultural Impact Assessment recommended the removal of these trees with the exception of the Tibouchina. A total of five Cherry Plum trees within the road verge are recommended for removal to accommodate the a footpath across the frontage, and otherwise the remaining street trees are retained, and are subject to conditions of consent based on the construction methodology recommended in the Arboricultural Impact Assessment.</p> <p>The Landscape Plan illustrates the landscape proposal inclusive of landscape treatments to satisfy Housing for Seniors or People with a Disability, Seniors Living Policy, and Warringah DCP Controls. The front deep soil setback along the southern boundary is interrupted by the bin store and pedestrian entry structure, and additional small tree planting will be required to reduce the streetscape built form. The front deep soil setback along the western boundary includes minimal planting to satisfy the relevant controls and conditions of consent shall be imposed requiring additional tree planting to soften the streetscape built form.</p> <p>Consideration should be given by Planning to the relocation of the proposed bin store northward against the garage wall to avoid an isolated space contrary to SEPP HSPD clause 37 Crime Prevention,</p>

Internal Referral Body	Comments
	and thus increase available landscape area to screen the bin store at the boundary.
NECC (Development Engineering)	No objections to the proposed seniors living development subject to conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed seniors living development is located above the Flood Planning Level and Probable Maximum Flood level relevant for the site. The subject allotment is also not impacted by the Probable Maximum Flood extent. No flood related development controls applied.
Strategic and Place Planning (Urban Design)	<p>The proposal has addressed the issues highlighted in the Pre-Lodgement Meeting (PLM):</p> <p><b>PLM Urban Design Comments:</b></p> <p>1. SEPP seniors calls for 25% rear of site to be single storey. Council's interpretation of the single storey portion would be the north-eastern corner of the site. As such the proposal does not comply as it has a two storey built form proposed in that corner. The objective of this control is to minimise the built form impact and overlooking/privacy issues to the next door neighbours' backyard. <b>Response:</b> The DA proposal has a slight encroachment of the 25% single-storey rear portion of site which is acceptable as there will be adequate landscape buffer to soften the built form impact and maintain privacy distances.</p> <p>2. A fitting built form would be one that resembles two houses being a double lot amalgamation in a streetscape of detached single and double storey houses. As such a clear break in the built form to allow substantial soft landscaping would be preferred. <b>Response:</b> The proposed DA built form is well articulated with single and double storey elements with a clear break creating the impression of two houses.</p> <p>3. Future submissions should include sunlight and privacy analysis to ensure amenities of next door neighbours are maintained. <b>Response:</b> Amenities to proposed units and neighbouring residences have been appropriately addressed.</p>
Traffic Engineer	<p><u>Proposal description:</u> The development application seeks consent for the demolition of all existing structures and construction of a 2-storey seniors living development incorporating:</p> <ul style="list-style-type: none"> <li>• Six (6), two-bedroom seniors living units;</li> <li>• A total of six (6) car spaces in the form of enclosed garages;</li> <li>• A 4.8 metre wide combined entry / exit driveway onto Drew Place.</li> </ul> <p><u>Car Parking:</u> The proposed parking provision of 6 car spaces in the form of enclosed garages satisfies the SEPP requirements of 0.5 spaces per bedroom.</p> <p><u>Bicycle Parking</u> Clause C3(A) of DCP 2011 requires the following bicycle parking provisions for Seniors Housing:</p>

Internal Referral Body	Comments
	<p>- 1 (high-medium security level) bicycle space / 2 independent living units, PLUS</p> <p>- 1 (high-low security level) bicycle space / 12 independent living units for visitors</p> <p>Therefore, the provision of 2 (high-medium security level) bicycle spaces for the proposed 6 seniors living units and 1 (high-low security level) bicycle space for the visitors shall be provided in accordance with the DCP requirements.</p> <p><u>Vehicular access:</u></p> <p>Given that the proposal has a low level of traffic generation and vehicular access is located in a cul-de-sac carrying a low level of traffic volume, the proposed width of the driveway is considered satisfactory.</p> <p><u>Accessible paths of travel to designated bus stops:</u></p> <p>The upgrade of Glen St/Pringle Ave roundabout together with provision of pedestrian crossing facilities on Glen Street and Pringle Ave has been planned to be implemented as part of the Council projects, so that the proposal can be supported in regards to access to bus stop subject to the footpath and Bus stops upgrade as per the conditions.</p> <p><u>Traffic Impact:</u></p> <p>The projected traffic generation is minimal and is not considered to have an adverse impact on the road network.</p> <p><u>Conclusion:</u></p> <p>In view of the above, the proposal can be supported subject to conditions.</p>
Waste Officer	<p><b>Final Waste Comments 22 February 2021</b></p> <p>A completed waste management plan has since been received and Waste have no further issues.</p> <p><b>Waste Services Updated Referral (Proposed plans received 25 November 2020)</b></p> <p>Proposal is approved with conditions</p> <p>Applicant must complete and submit all sections of the Waste Management Plan. Demolition stage pages 3 &amp; 4 of the waste management (dated 2/9/2020) are the only pages received to date.</p> <p><b>Waste Services Referral</b></p> <p><b>Recommendation – Refusal</b></p> <p>Specifically:</p>

Internal Referral Body	Comments
	<p>The waste bin storage room is not large enough to contain the required number of bins.</p> <p>a) The room is required to be large enough to contain 8 x 240L bins. The dimensions for each container are: · Depth: 750mm · Width: 600mm · Height: 1080mm</p> <p>b) The room can be designed so that there is an isle a minimum of 1m wide between each row of bins or between a single row of bins and a wall.</p> <p>The doorway opening to the waste storage room and the width of the path leading to the waste storage room is not wide enough. Any doors fitted on the Waste Storage Area, pathway and access must be:</p> <p>a) A minimum width of 1200mm</p> <p>b) Unobstructed by any locks and security devices.</p> <p>The Waste storage area is a designated area to accommodate communal use waste and recycling bins. The Waste storage area: a) must not be used to store any other items b) must be clear of any service and utilities infrastructure and related activities.</p> <p>Please complete and submit all sections of the Waste Management Plan. Demolition stage pages 3 &amp; 4 of the waste management (dated 2/9/2020) are the only pages received to date.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.</p> <p>Underground Cables</p> <p>Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.</p> <p>Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the</p>



External Referral Body	Comments
	anchors must not pass over the top of any cable

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

#### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

##### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1120493M dated 24 July 2020).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

##### **SEPP (Housing for Seniors or People with a Disability) 2004**

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 SEPP (HSPD) as the development is for in fill self care housing.

#### **Chapter 1 – Preliminary**

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is considered to be consistent with the aims of the Policy as detailed below:

- The proposed development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- The proposed development makes use of existing infrastructure and services as the site is within 280m of the bus stop on the north and south side of Glen Street.
- When considering the development against the aims of achieving good design, the development must be considered in context with the other provisions of the SEPP. In this regard, in the context of the built environment, the development proposes the construction of a two storey development which is well modulated and articulated with at grade parking and effective screen planting. The proposed built form effectively minimises and reduces the impacts on the amenity and character of the area and is considered to be a good design.
- The design of the development was peer reviewed by the Design Sustainability Advisory Panel (DSAP) who support the design as a largely compliant scheme which achieves good internal and external amenity for the future residents while maintaining and protecting the amenity of neighbouring properties.

## Chapter 2 – Key Concepts

Comment:

The proposed development is for the redevelopment of the site to accommodate "*in-fill selfcare housing*" which is defined as "*seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care*". Accordingly, the proposed development is considered consistent with the provisions outlined in Chapter 2 of the SEPP.

## Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
<b>PART 2 - Site Related Requirements</b>			
26(1)	Satisfactory access to:	Satisfactory access is available to these	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	(a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	services from the site.	
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The subject site is located within 280m to bus stop on north and south side of Glen Street which provides services to Glenrose and Forestway Shopping Centre, Warringah Mall and the City.  It is also noted that the upgrade of Glen Street / Pringle Avenue roundabout together with provision of pedestrian crossing facilities on Glen Street and Pringle Ave has been planned to be implemented as part of the Council projects, so that the proposal can be supported in regards to access to bus stop subject to the footpath and Bus stops upgrade as per the conditions.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not Bush Fire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Given the existing residential use of the site, it is considered that there is suitable access to water and sewerage infrastructure.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):  i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the	The proposed development is considered compatible with the surrounding residential land uses and was not subject to the requirements of Clause 25 for the attainment of a Site Compatibility Certificate.  The site is serviced by existing infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development.  The proposed two storeys built form demonstrates a suitable bulk and scale in this location and provides a human scale of development complimentary to the	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	existing, approved and future uses on land in the vicinity.	
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	A detailed site analysis plan has been provided and further detail within the Statement of Environmental Effects which satisfactorily address this requirement	Yes

#### Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	As noted above, DSAP have reviewed the proposal and considered that the two storey development responds appropriately to the context of the site. The Panel considered that the building mass is broken up with significant articulation of the facades and substantial deep soil zones are available for screen planting which will help integrate the built form with the streetscape. The proposed building form is considered to complement the existing one and two storey built form of development surrounding the site and provides a good level of internal and external amenity for future residents while maintaining and protecting

Section	Requirements	Comment
		<p>neighbouring residential amenity.</p> <p>The site is located within a R2 Low Density Residential area and the development is generally in accordance with the built form controls in the WLEP and WDCP.</p> <p>In summary, the proposed built form has been assessed as a suitable response to the character and built form of the locality.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p>The proposed two storey development is located within a landscape setting and has been sensitively designed to minimise visual impacts on the neighbourhood character. The bulk and massing is appropriately broken up and articulated so that the development presents as a town house typology consistent with the character of the area. The car parking is within garages which is also consistent with the character of the area and the proposal utilises a driveway in a similar location to the existing driveway off Drew Avenue.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	<p>The proposed development provides a landscape setback to both street frontages and includes adequate areas of deep soil planting which will help to soften and reduce any perceived visual impact of the development.</p> <p>The facades provide a suitable articulation to reduce the mass and bulk of the development.</p>
4. Impacts on neighbours	<p>The proposal is generally in accordance with the requirements of this section.</p>	<p>Shadow analysis has been submitted which confirms that the proposal will not result in unreasonable shadow impacts to neighbouring properties.</p> <p>The upper floor terrace to unit 6 is located 8.4m to the rear (northern) boundary and 3m to the side (eastern) boundary. The upper floor terrace to unit 5 is located 6.3m to the northern boundary. A privacy</p>



Section	Requirements	Comment
		<p>screen is proposed along the eastern edge of the upper floor terrace to unit 6 which will help protect the privacy of the dwelling at No. 3 Drew Place. In order to enhance the privacy of property to the north at No. 9 Evelyn Place a condition requires a planting to be included to the balcony. The balcony to Unit 5 will not result in any direct overlooking of the rear private open space to No 40 Pringle Avenue, refer to discussion under Clause 4.6,</p> <p>Subject to this condition referred to above the proposal will not result in unreasonable impacts on neighbouring residents by way of loss of privacy.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Provide safe and distinct pedestrian routes to all dwellings and communal facilities.</li> </ul>	<p>The proposal provides an accessible pedestrian link from the development to the Drew Place frontage with a new footpath along Drew Place to connect to the footpath of Pringle Avenue.</p> <p>The site layout provides clear entrances to each dwelling. Quality useable private open space is provided for each unit and the overall development is set in landscape setting with adequate deep soil planting along the boundaries.</p> <p>Sufficient solar access is provided to living area and areas of private open space.</p> <p>Sufficient parking is provided within garages set back 4m from Drew Place gable end to Drew Place.</p>

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood	a. Recognise the desirable elements of	The desirable elements of the locations current character	Yes

Control	Requirement	Proposed	Compliance
amenity and streetscape	the location's current character so that new buildings contribute to the quality and identity of the area.	consists of low density dwellings to the north and west setback from street frontages and medium density developments to the immediate south with the Senior 's Housing development at No. 36 Pringle Avenue.	
		The DSAP Panel consider that the proposal recognises the desirable elements of the current character with well articulated facades, appropriate materials and detailing which relates favourably to its context and will positively contribute to the quality and identify of the surrounding area.	
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan. c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are	The site is not located within a heritage conservation area or within proximity to any heritage items.  The development (building walls) provides a compliant staggered primary setback to Pringle Avenue of between 6.5m to 7.7m to Pringle Avenue and a compliant secondary setback to Drew Place with a staggered setback of the building walls of between 4m to 5.3m.  It is noted that the at grade ground level private terraces breach both the primary and secondary setbacks. These elements are open and will not impact on the sense of openness. In addition, suficient landscaping is proposed to help integrate the development and provide	N/A  Yes

Control	Requirement	Proposed	Compliance
	located on the boundary, the impact of the boundary walls on neighbors.	<p>privacy for future occupants.</p> <p>The location of the bin store also beaches the secondary 3.5m setback to Drew Place and there are minor projections of the upper floor terraces to the primary frontage. The minor breach of these ancillary elements are assessed as acceptable.</p> <p>The setbacks to the frontages are generally consistent with the setbacks requirements of the SEPP (SHPD) and the existing Seniors development located to the immediate south at No. 36 Pringle Avenue.</p> <p>The single storey component is generally contained within the north-east corner of the site in accordance with the SEPP (HSPD) and in order to minimise the bulk and scale and overshadowing impacts to neighbouring residents.</p> <p>Despite the minor breach in the built form controls the proposal is considered to be compatible with the scale of other developments in the streetscape and will not result in solar access or visual or acoustic privacy issues to neighbouring properties.</p>	
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The proposal increases the current primary front setback to Pringle Avenue resulting in a built form that is more consistent and sympathetic to the front setback of neighbouring developments.	Yes
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in	The proposed planting includes species which are acceptable to Council subject to conditions.	Yes

Control	Requirement	Proposed	Compliance
	the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	There are no significant existing trees all species are exempt. The site is not located within a Riparian Zone.	N/A  N/A
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed with primary areas of private open space generally facing Pringle Avenue and Drew Place. With the exception of Unit 6 which has an upper floor balcony located in the northeast corner. The setback of the upper floor balcony to unit 6 is 8.4m to the northern boundary and 3m to the eastern boundary. Subject to a condition requiring screen planting to the balcony and a privacy screen to the eastern edge of the balcony it is not anticipated that the proposal will result in unreasonable impacts on neighbours by way of loss of privacy. A condition is included in the recommendation to this effect. In summary, the development has been found to be consistent with the requirements of this Clause.	Yes (subject to conditions)
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation	Solar access and overshadowing from the development has been assessed as reasonable. The development is compliant with 83% of dwellings receiving a minimum 3 hours direct sunlight between 9am and 3pm mid winter.	Yes

Control	Requirement	Proposed	Compliance
	solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The proposed stormwater Management is considered to be acceptable.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	The development provides clear sight lines of the entry to the development and the front of the site and provides adequate casual surveillance of both streets and the entry of the site.	Yes
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local	Within 280m to bus stop on north and south side of Glen Street which provides services to Glenrose and Forestway Shopping Centre, Warringah Mall and the City.	Yes



Control	Requirement	Proposed	Compliance
	facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.		
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The site provides adequate waste storage facilities.	Yes

**Part 4 - Development standards to be complied with**

**Clause 40 – Development standards – minimum sizes and building height**

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1395.2sqm	Yes
Site frontage	20 metres	29m to Pringle Avenue	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	2 storeys	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	The subject site is a corner site with two street frontages. The 25% area is taken to be the northern portion of the site. There is a minor projection of the setback which relates to the a 0.9m projection of the study and ensuite and part of the upper floor terrace to unit 5. The applicant has submitted a clause 4.6 variation of the standard	No* (refer to Clause 4.6 Variation)

Control	Required	Proposed	Compliance
		and has amended the plans so that the balcony does not contain a pergola over the element that breaches the control.	

\*The non-compliance with Clause 40 ae addressed in detail within the Clause 4.6 section of th

#### Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	The development is capable of complying with this requirement	Yes, by condition.
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	The development is capable of complying with this requirement.	Yes, by condition.
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable,	The letterboxes are provided adjacent to the pedestrian entry via Drew Place.	Yes

Control	Required	Proposed	Compliance
	and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	The development provides compliant car parking.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	The whole development has been designed to ensure accessibility is provided from the street frontage to the entrance of each dwelling.	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	The development is capable of complying with this requirement.	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Bathroom	The bathroom is to comply with the	The development is capable of complying with this	Yes

Control	Required	Proposed	Compliance
	requirements described in Clause 9 of Schedule 3.	requirement.	
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	The development is capable of complying with this requirement.	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	The development is capable of complying with this requirement.	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	The development is capable of complying with this requirement.	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	The development is capable of complying with this requirement.	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	The development is capable of complying with this requirement.	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	The development is capable of complying with this requirement.	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	The development is capable of complying with this requirement.	Yes
Garbage	A garbage storage area must be provided in an	The development is capable of complying with this	Yes

Control	Required	Proposed	Compliance
	accessible location.	requirement.	

**Part 5 Development on land adjoining land zoned primarily for urban purposes**

This part is not applicable to the subject site.

**Part 6 Development for vertical villages**

This part is not applicable to the proposed development.

**Part 7 Development standards that cannot be used as grounds to refuse consent**

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8m	Yes
Density and scale	0.5:1	0.5:1 (701.8sqm)	Yes
Landscaped area	30% of the site area is to be landscaped	35.4% (494sqm)	Yes
Deep soil zone	15% of the site area two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	24% (341.8sqm)	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Compliant solar access is provided to 5 units (83%)	Yes
Private open space	(i) in the case of a	All Units have areas of	Yes



Control	Required	Proposed	Compliance
	<p>single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area</p>	<p>POS that exceed the minimum 15sqm / 10sqm POS requirement in the form of at grade terraces or upper level balconies. All areas of POS have a minimum 3m wide / long dimension and are accessible from living areas.</p>	
Parking	0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider.	Based on the 12 bedrooms proposed – 6 carparking spaces required). The proposal provides a compliant spaces in the form of garages.	Yes
Visitor parking	None required if less than 8 dwellings	Six (6) units are proposed therefore no visitor spaces are required.	N/A

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid. A response has been received which offers no objections subject to conditions. The Ausgrid conditions are included in the recommendation.

## Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes

### Detailed Assessment

#### 4.3 Height of buildings

The height of the proposal complies with the WLEP 8.5m development standard. As a SEPP (HSDP)

development the 8m SEPP height limit takes priority. The proposal complies with the 8m SEPP height limit, however, there is a minor breach of the single storey limit within the rear 25% of the site area. This breach is discussed in detail within Clause 4.6 of this report.

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Clause 40(4) (c) SEPP (SHPD) requires development in the rear 25% area of the site not to exceed 1 storey in height.
Proposed:	Unit 5 - The wall of the study and ensuite to Unit 5 on level 1 breach the 25% rear single storey zone with a 0.9m projection of the wall into the zone.
Percentage variation to requirement:	The area that breaches the 25% equates to 15.6sqm or a <b>4.4%</b> breach of the requirement.

##### Assessment of request to vary a development standard:

Clause 4.6 of WLEP 2011 applies to the proposed development as the overall height of all buildings exceeds the 8.5m height limit. However, the application has been lodged pursuant to SEPP (HSPD) 2004, which contains a Building Height Development Standard, which prevails over the height standard within WLEP 2011.

The following assessment of the variation to Clause 40 (4) (c) SEPP (SHPD) - Maximum 1 storey within the rear 25% development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

##### Comment:

Clause 40 (4) (c) SEPP (SHPD) - Maximum 1 storey within the rear 25% development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v*

*Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

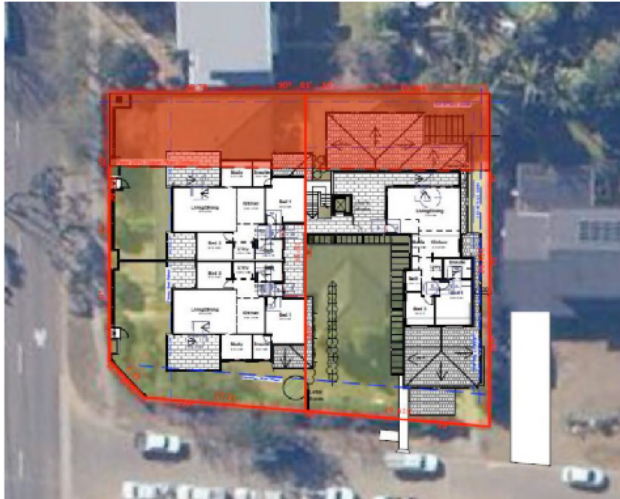
*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

*The applicants written request argues, in part: the consolidated allotment, the subject of this application, comprises 2 north-south running Lots with frontage and address to Drew Place. Applying the same principle adopted in Warrawee Securities Pty Limited v Pittwater Council [2006] NSWLEC 206 the rear 25% site area single storey development standard is reasonably applied to the boundary furthest from the Drew Place frontage being the northern boundary of the consolidated allotment.*

The applicant has submitted the following diagram that illustrates the rear 25% site area calculation applied to the northern boundary relative to the rear yards of the adjoining properties. The diagram shows the extent of the first floor elements that breach the single storey rear 25% site area standard. Specifically the elements that breach the standard are a 0.9m portion of the study and ensuite to Unit 5. It is noted that the proposal has been amended to remove the pergola over the balcony to Unit 5, as such the open portion of the balcony no longer encroaches on the 25% area of the site.





*Diagram showing the elements that breach the 25% single storey standard (source BBF Planners)*

In detail, the study and ensuite to Unit 5 equate to a 15.6sqm area of the 25% site back area which represents a 4.4% breach the control. The applicant notes that these elements do not extend past the rear eastern wall alignment of No. 40 Pringle Avenue, representing the rear yard of this property. In addition, the windows can be suitable screened to prevent directly overlooking should the consent authority consider it necessary to do so. In addition, the applicant notes the following:

- *The surrounding subdivision pattern is irregular in terms of allotment geometry and the relationship of the rear open spaces of adjoining properties. There is no consistent established rear open space alignment.*
- *The rear 25% area of the subject site adjoins the rear yards of No. 3 Drew Place to the East, No. 40 Pringle Avenue to the north and No 9 Evelyn Place to the north east.*
- *The shadow diagrams demonstrate that the breaching 2 storey element located within the rear 25% area of the site will not overshadow the rear yard of any adjoining property at any time between 9am and 3pm on 21st June.*
- *The noncompliant second storey building elements proposed will not give rise to any scenic view impacts.*
- *In relation to privacy, the breaching elements do not create unacceptable privacy impacts but can be screened or prevent overlooking if required. It is noted that the elements that encroach within the rear 25 setback area do not extend past the rear eastern wall alignment of No. 40 Pringle Avenue / the rear yard of this adjoining property.*
- *The distribution of building height and floor space on this particular site achieves the implicit objective of the standard in that the design of the breaching 2 storey building element protects the amenity of the rear of the adjoining properties.*

Comment:

The Applicant's justification is generally supported. The elements that breach the first floor 25% rear setback standard will not give rise to unreasonable visual impacts and add interest and articulation to the northern facade.

The balcony to Unit 5 is now a compliant element having been amended to remove a portion of the roof (pergola) that breached the 25% rear setback area. The balcony will not overlook any windows to the neighbouring property at No 40 Pringle Avenue as it is directed to the street frontage and the principle area of private open space to No. 40 Pringle Avenue is located to the rear. Similarly the window to the

study will overlook the blank southern gable wall to No. 40 Pringle Avenue and obscure glazing will be installed in the ensuite window. In summary, the minor breach of the single storey height limit within the 25% rear setback will not result in unreasonable amenity impacts to neighbours.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Maximum 1 storey within the rear 25% development zone. An assessment against these objectives is provided below.

**Objectives of development standard**

**CLAUSE 40 (4) (c) of the SEPP HSDP**

While there is no specific objective to the standard within Clause 40(4) the primary purpose of the single storey limit within the rear 25% single storey zone is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties. Placing built form into the rear of a property which generally forms part of its open space and adjoins the open space of other properties to the side and rear can have significant impacts on amenity not only from loss of solar access, privacy and views but also from the presence of increased or new building bulk and the removal of landscaping. An assessment of this purpose is provided below. In addition, given that there is no specific objective to Clause 40(4) (c) it is also worth assessing the development against the objectives as prescribed by Clause 4.3 - "Height of Building" of the WLEP 2011 to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of Clause 4.3 are as follows:

***(a) To ensure that buildings are compatible with the height and scale of surrounding and nearby development***

Comment:

The 25% rear zone has been nominated to be located within the northern zone which corresponds to

the rear garden areas of the adjoining allotments. The height of the proposed seniors housing development is compatible with surrounding and nearby developments which includes one and two storey dwellings. Pursuant to the SEPP (HSDP) the scale and density of the development is greater than that of the low density detached dwellings that surround the site, however, it is compatible with the scale of the Seniors Housing development at 36 Pringle Avenue to the immediate south. The two storey elements that breach the 25% rear single storey zone (the wall of the ensuite and study to Unit 5) will not in itself result in a development that is not compatible with the height and scale of existing developments. Furthermore, the built form is broken up and articulated to ensure that the overall height and scale of the development is not considered to be excessive and is consistent with the height and scale of surrounding development.

In summary, the development is considered to be consistent with this objective.

***(b) To minimise visual impact, disruption of loss of privacy and loss of solar access.***

Comment:

A substantial set back of which varied between 7m -10m on the first floor and between 2.5m and 7m on the ground floor is provided the northern boundary (the 25% rear single storey zone). It is noted that the existing dwelling is set back between 1.9m, 4.7m and 8m from the northern boundary. The significant set back of the building combined with the orientation of the site will ensure that the bulk and scale of the two storey development protects the amenity of the rear of the adjoining properties. Shadow analysis confirms that the proposal will not result in unreasonable impacts on neighbouring amenity by way of overshadowing. It is noted that the proposal generally complies with all other built form controls including height, envelopes, density (FSR), landscape open space and side setbacks.

As noted above, the minor first floor elements, namely a small section of the study and ensuite to Unit 5 that protrude within the rear 25% rear single storey zone will not result in overlooking of the rear garden on No. 40 Pringle Avenue or unreasonable impacts on neighbouring amenity. In addition, the generous northern set back allows for canopy planting along the northern boundary which will help screen the proposal to further reduce any privacy issues and ensure the perceived bulk of the development is reduced.

It is noted that concern has been raised from the neighbour to the north-east at No. 9 Evelyn place regarding overlooking from the windows and balcony of unit 6 to areas of private open space and windows. The 8.4m setback of balcony and the 10m setback of the window to Unit 6 is fully compliant with the SEPP control being set back beyond the 25% rear zone. In order to protect the amenity of the both the future residents of this unit and the neighbours the Design Panel have suggested that screen planting be included along the edge of the upper floor balcony. A condition is recommended to this effect. Finally, the proposal will not result in any unreasonable impacts on view loss.

The development is considered to be consistent with this objective.

***(c) To minimise the adverse impact of development on the scenic quality of Warringah's coastal and bush environments.***

Comment:

The development will not have an unreasonable impact on the scenic quality of Northern Beaches coastal and bush environments. The buildings are broken-up through variation of the building form and use of appropriate colours and finishes, which are consistent with the surrounding environment.

***(d) To manage the visual impact of development when viewed from public places such as parks***

**and reserves, roads and community facilities.**

Comment:

The substantial articulation of the built form, including the breaking-up of the mass of the buildings, and the use of high-quality materials and finishes, will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

In summary, the distribution of building height is consistent with the objectives of the control in that the breaching 2 storey element will not result in unreasonable amenity or visual impacts on surrounding properties or the character of the area.

**Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

- ***To provide for the housing needs of the community within a low density residential environment.***

Comment:

The proposed seniors housing development achieves this objective as it provides for the ho

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Comment:

This objective is not relevant.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment:

The proposed development complies with the landscaped area provisions of SEPP HSPD. The proposal exceeds the 30% landscape open space requirement and the 7% deep soil planting requirement providing over 35% of the site as landscaped open space and 24% as deep soil zones. Extensive setbacks with areas of deep soil planting are provide to the northern, southern and western boundary to ensure sufficient canopy trees can be established which will enhance the streetscape, soften the bulk of the development and help protect the amenity of the future residents and neighbours.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent



to be granted.

Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the 25% rear single storey zone SEPP Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.3m	N/A	Yes
B2 Number of storeys	2 / 3	1/2	N/A	Yes
B3 Side Boundary Envelope	4m	4m	N/A	Yes
	4m	4m	N/A	Yes
B5 Side Boundary Setbacks	0.9m	<i>Eastern side boundary</i> Ground Floor - 1.2m (to garages) - 3m (to unit 3) First floor between 1.7m - 3m to (Unit 6)	N/A	Yes
	0.9m	<i>Northern side boundary</i> Ground floor varies between 2.5m and 7m First floor varies between 6.4m to 7.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m (3.5m secondary frontage)	<i>Primary (Pringle Avenue)</i> Ground floor - 6.5m to 7.8m to wall of development. at grade terraces 3.8m to 5.8m . First Floor - 6.1m (balconies) - 6.5m to wall of development <i>Secondary (Drew Place)</i> 4m - to 4.3 to wall of development 0.8m to in store		No *Bin enclosure, at grade terraces and a small projection of upper floor balconies breach the primary and secondary setbacks, however, these elements have been assessed as acceptable.



B9 Rear Boundary Setbacks	6m	Not Applicable as a corner allotment	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	*35.4%	4.6%	No

**\*Note:** The landscape open space complies with the 30% requirement under the Seniors Housing SEPP.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

Clause B7 requires a 6.5m front set back to the Pringle Street and a 3.5m side set back to Drew Place.

#### ***Merit assessment***

The eastern wall of the development fully complies with the 6.5m front setback, however, two ground level terraces and a small projection (0.4m) of the upper floor balconies breach the front setback. The southern wall of the development generally exceeds the 3.5m set back to the secondary frontage. The bin store breaches the secondary setback being located 0.8m to the southern boundary.

Despite the numerical non-compliance of the front set back the minor breach of the development achieves the objectives of the control as detailed below.

- ***To create a sense of openness.***

Comment

Sufficient areas of deep soil planting are retained to both frontages to ensure that a sense of openness is retained. The breach of the ground level terraces and the ancillary bin store will not add to the visual bulk of the development which maintains an open frontage to both streets with sufficient areas of deep soil retained along the frontage to provide for screen planting.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment

The development is sited to be generally consistent with the existing front set back of other buildings along Pringle Avenue and provides for sufficient setback for landscape planting to integrate and soften the built form. As a corner site the setback of the development along Drew Place is generally consistent with the setback of the Seniors Housing development to the immediate south at 36 Pringle Avenue, including the siting of the bin store which breaches the secondary setback. Again sufficient deep soil zones are provided to Drew Place to allow for planting to help reduce the visual impact of the built form.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment

The proposal has been designed to ensure the visual quality of the streetscape and public spaces are protected and enhanced. The proposal generally complies with the numerical setbacks and the minor breach of the upper floor balconies allows for added articulation of the western facade.

- ***To achieve reasonable view sharing.***

Comment

The proposal will not result in any view loss from neighbouring residential properties.

**B9 Rear Boundary Setbacks**

On corner allotments for land zoned R2 Low Density Residential or R3 Medium Density Residential, where the minimum rear building setback is 6 metres, the rear building setback does not apply.

**D1 Landscaped Open Space and Bushland Setting**

Clause D1 requires 40% of the site to be landscape open space. The proposal retained 35.4% of the site as landscape area which exceeds the 30% minimum requirement required under the Seniors Housing SEPP which takes precedence over the DCP. The amount of landscape open space has been assessed as acceptable and subject to a condition requiring an amended landscape plan the proposal has been assessed acceptable.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

**POLICY CONTROLS****Northern Beaches Section 7.12 Contributions Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$24,412 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,441,219.

**CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

In summary, a detailed assessment has been required for the following specific issues:

The proposal generally complies with the built form controls of the SEPP (HSDP), the WLEP and WDCP. The minor 4.4% breach of the 25% rear single storey zone will not in itself result in unreasonable visual impacts or amenity impacts to neighbours by way of overlooking to existing rear gardens.

In addition, the minor breach of the WDCP front setback, namely the ground level terraces will not diminish the landscape setting of the development to Pringle Avenue which retains significant areas of deep soil zone for future planting. The variation of the eastern wall with a minor breach of the balconies will also add to the articulation of the development to the primary frontage.

The minor breach of the bin store to the secondary frontage has also been assessed as acceptable given that sufficient space is retained immediately adjacent to the bin store for screen planting and it's location is consistent with the location of the bin store to the Senior development at 36 Pringle Avenue.

The application was peer reviewed by the DSAP who commended the scheme as a generally compliant development set in a significant landscape buffer that provides a high level of amenity to future residents while maintaining the amenity of neighbouring residents. The articulation, modulation and materiality of the development was supported as a high quality scheme that reflects the character of the area.

In summary, the proposal is recommended for approval subject to conditions, provided in accordance with the Environmental Planning and Assessment Act 1979 and Regulations. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1072 for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence on land at Lot 1 DP 228962, 1 Drew Place, BELROSE, Lot 2 DP 228962, 1 Drew Place, BELROSE, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 Rev G Site Plan	23/07/2020	Turner Hughes Architects
DA02 Rev E Roof Plan	01/03/2021	Turner Hughes Architects
DA03 Rev E Ground Floor Plan	23/07/2020	Turner Hughes Architects
DA04 Rev F First Floor Plan	23/07/2020	Turner Hughes Architects
DA05 Rev B Section 01	23/07/2020	Turner Hughes Architects
DA06 Rev B Section 02	23/07/2020	Turner Hughes Architects
DA07 Rev B Section C	23/07/2020	Turner Hughes Architects
DA08 Rev C Elevation 01	01/03/2021	Turner Hughes Architects
DA09 Rev B Elevation 02	23/07/2020	Turner Hughes Architects
DA10 Rev B Elevation 03	23/07/2020	Turner Hughes Architects
DA11 Rev E Unit Details - Unit 1	10/07/2020	Turner Hughes Architects
DA12 Rev E Unit Detail - Unit 2	10/07/2020	Turner Hughes Architects
DA13 Rev E Unit Detail - Unit 3	10/07/2020	Turner Hughes Architects
DA14 Rev E Unit Details Units 4 and 5	10/07/2020	Turner Hughes Architects
DA15 Rev E Unit Details - Unit 6	10/07/2020	Turner Hughes Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
D01 Rev A Ground Floor Stormwater Drainage Plan	11/08/2020	NB Consulting Engineering
DA02 Rev A First Floor and Lower Roof Stormwater Drainage Plan	11/08/2020	NB Consulting Engineering
DA03 Rev A Upper Roof Stormwater Drainage Plan	11/08/2020	NB Consulting Engineering
DA04 Music Catchment Plan	11/08/2020	NB Consulting Engineering
DA05 Rev A Stormwater Drainage Notes and Details	11/08/2020	NB Consulting Engineering
DA06 Rev A Stormwater Drainage Details Sheet 1	11/08/2020	NB Consulting Engineering
DA07 Rev A Sediment and Erosion Plan	11/08/2020	NB Consulting Engineering
DA08 Rev A Sediment and Erosion Control Details Sheet 1	11/08/2020	NB Consulting Engineering
<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX certificate	24/07/2020	ESD Synergy Pty Ltd



BASIX Assessment Report and Thermal Comfort Commitments	24/07/2020	ESD Synergy Pty Ltd
NatHERS report	24/07/2020	Adriana Segovia
Access Review	16/07/2020	J Barling
Arboricultural Assessment Rev A	05/08/2020	HUGH The Arborist
Flood Risk Management Report	17/08/2020	Stewart McGready Rick Wray Brad Seghes
Traffic Report	09/07/2020	PDC Consultants

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Site Plan	No date	Andrew Pearce Landscape Design
Landscape Plan Tree Schedule	No date	Andrew Pearce Landscape Design
Landscape Plan Plant Schedule	No date	Andrew Pearce Landscape Design

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
DA23 Rev A Demolition nad Waste Management Plan	23/07/2020	Turner Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**2. Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	01/10/2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**3. Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.



**FEES / CHARGES / CONTRIBUTIONS****5. Policy Controls****Northern Beaches 7.12 Contributions Plan 2019**

A monetary contribution of \$24,412.19 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,441,219.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

**6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.



7. **Construction, Excavation and Associated Works Security Bond ( Footpath Pringle Avenue and associated works))**

The applicant is to lodge a Bond of \$25,000 as security against any damage or failure to complete the construction a 1.5m wide concrete footpath (Pringle Ave frontage) and construction of a new pram ramp at the corner of Pringle Avenue and Drew Place . The bond also covers the removal of all redundant driveways and replacement with kerb and gutter.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works (Security Bond)**

A bond of \$5000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a maintenance bond of \$3000 for the construction of 1.5m wide concrete footpath and associated footpath works. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic

Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

12. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Screen planting in the form of climbers shall be provided to the upper floor balcony to Units 5 and 6.
- The studys shall remain open to the living room, no doors are permitted to enclose the space which can not be used as a bedroom.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

13. **On-site Stormwater Detention Details**

The Applicant is to submit stormwater drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY PL850, and generally in accordance with the concept drainage plans prepared by NB Consulting ,Job number 2006103 DRW NOS D01 ,D02, D03, D05, D06 dated 11/08/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG accredited by Professionals Australia and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

14. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

15. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with

Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

16. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) two native small trees: Scribbly Gum (*Eucalyptus haemastoma*) as listed in the Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward, shall be documented to the southern boundary deep soil area, nominated at a 75 litre pot container size,
- ii) two native small trees: Scribbly Gum (*Eucalyptus haemastoma*) as listed in the Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward, shall be documented to the western boundary deep soil area, nominated at a 75 litre pot container size,
- iii) tree planting shall be located to minimise impact to adjoining properties and shall be located at least 2 metres from common boundaries, and accordingly garden areas shall be expanded to support such planting locations,
- iv) two street trees: Water Gum (*Tristania laurina*) shall be documented within the road verge installed at 6 metre centres within the western road verge, nominated at a 75 litre pot container size, and centred within the road verge between footpath and kerb.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: landscape amenity.

17. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

18. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

19. **Bicycle Parking**



The applicant shall provide 2 (high-medium security level) bicycle spaces for the proposed 6 seniors living units and 1 (high-low security level) bicycle space for the visitors. The bicycle spaces are to be in compliance with the relevant guidelines as per the DCP.

Reason: To comply with Warringah DCP (DACTRCPC1)

20. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

21. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

22. **Tree removal within the property**

The following Exempt Species do not require Council consent for removal:

- T4 Nyssa; T11 Chinese Elm; T12 and T13 Japanese Camellia; T17 Bangalow Palm; and T18 Bird Cherry.

Reason: to enable authorised building works

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

23. **Tree removal within the road reserve**

This consent approves the removal of the following trees within the road reserve, as recommended in the Arboricultural Impact Assessment, impacted by the proposed new footpath across the site frontages and driveway:

- T5, T6, T8, T9 and T10 (all Cherry Plum).

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: public liability.



## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 24. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

### 25. Footpath Construction

The applicant shall construct a 1.5m wide concrete footpath for the full Pringle Avenue frontage and a pedestrian ramp at the corner of Pringle Ave and Drew Place. The works shall be in accordance with Council's Engineering Drawings and standards.

Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specifications.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

### 26. Notification of Inspections (infrastructure works to be handed over to Council)

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Prior to the pouring of the 1.5m wide concrete footpath and pedestrian ramp.

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

### 27. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

### 28. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5 metres wide (Drew Place) in accordance with Northern Beaches Council Drawing No A4-330/Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

29. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

30. **Protection of Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages. The following street trees fronting the site shall be protected: T1 and T2 Weeping Bottlebrush; and T7 Hong Kong Orchid.

Existing street trees within the frontage of the development site shall be protected by tree protection fencing to the extent and alignment as determined by an Arborist with minimum AQF Level 5 in arboriculture, or otherwise as directed by the Arborist, and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

31. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation, except as proposed by the development application for retention ie. T14 Tibouchina,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be

submitted by the Arborist to the Certifying Authority,  
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,  
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,  
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,  
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Hugh The Arborist, as listed in the following sections:

- i) section 10. Proposed Public Footpath,
- ii) section 11. Recommendations,
- iii) section 12. Arboricultural Work Method Statement and Tree Protection Requirements,
- iv) section 13. Hold Points,
- v) Appendix 1B - Tree Retention and Protection Plan

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

**32. Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated 2/9/2020, however this included only the Demolition stage pages 3 & 4 of the waste management plan. Applicant must complete and submit all sections of the Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

**33. Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE**

**34. Landscape completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

**35. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

**36. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all Councils Water Management policy and the approved drainage plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

**37. Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

**38. Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces.



39. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

40. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) BASIX certificate dated 24/07/2020 prepared by ESD Synergy Pty Ltd
- (b) BASIX Assessment Report and Thermal Comfort Commitments dated 24/07/2020 prepared by ESD Synergy Pty Ltd
- (c) NatHERS report dated 24/07/2020 prepared by Adriana Segovia
- (d) Access Review dated 16/07/2020 prepared by J Barling
- (e) Arboricultural Assessment Rev A dated 05/08/2020 prepared by HUGH The Arborist
- (f) Flood Risk Management Report dated 17/08/2020 prepared by Stewart McGready Rick Wray Brad Seghes
- (g) Traffic Report dated 09/07/2020 prepared by PDC Consultants

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To ensure compliance with standards.

41. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)



42. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.  
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

43. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

44. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines  
([https://auspost.com.au/content/dam/auspost\\_corp/media/documents/Appendix-01.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf)).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

45. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

46. **Removal of Redundant Driveways**

.All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.(DACTRFPOC1)

47. **Upgrade footpath and designated bus stops**

The applicant is to construct 1.5m wide footpath along the frontage at Drew Pl in accordance with the Council requirements and also upgrade the existing footpath along the frontage at Pringle Ave. The designated bus stops on both sides of Glen Street in front of the showground and No.20 Glen Street are required to be upgraded to be DDA compliant bus stops.

Reason: To provide accessible path of travel and bus stops(DACTRFPOC2)

48. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

49. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

50. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

51. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved

plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

#### ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

52. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Amended Landscape Plan.

Reason: to maintain local environmental amenity.

53. **Noise from lift**

Noise from the lift shall not exceed background noise levels +5dB(A) as measured from any neighbouring residential premises.

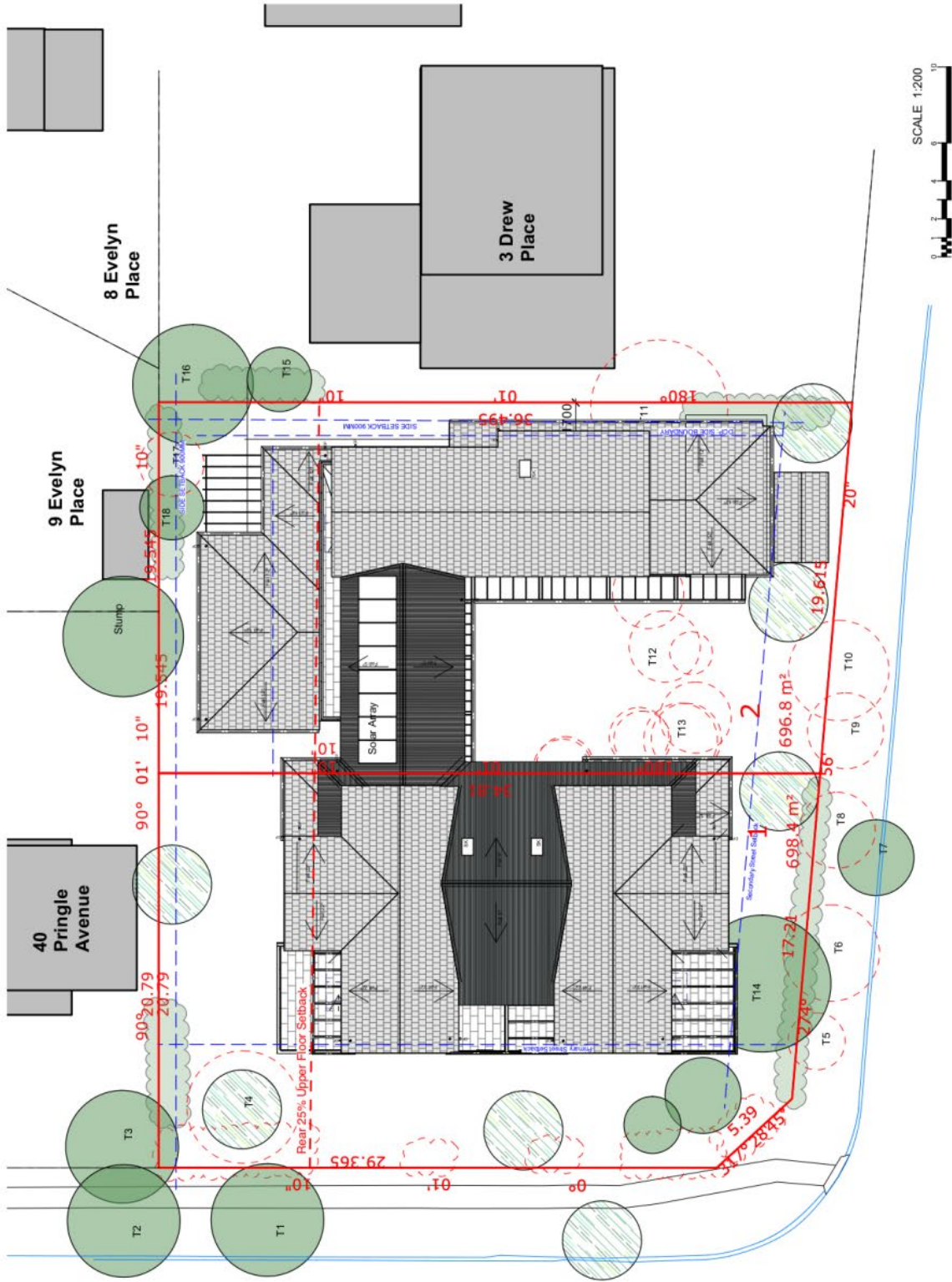
Reason: To maintain the amenity of the area and not create offensive noise.



**TURNER HUGHES ARCHITECTS**  
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Nom. Architect - Rick Turner NSW 4318

REV	DESCRIPTION	BY	DATE
D	Draft DA Issue	MO	7/7/20
E	Revised Fencing	MO	20/7/20
F	Revised Path/Aboriginis Numbers added	MO	22/7/20
G	DA Issue	MO	23/7/20





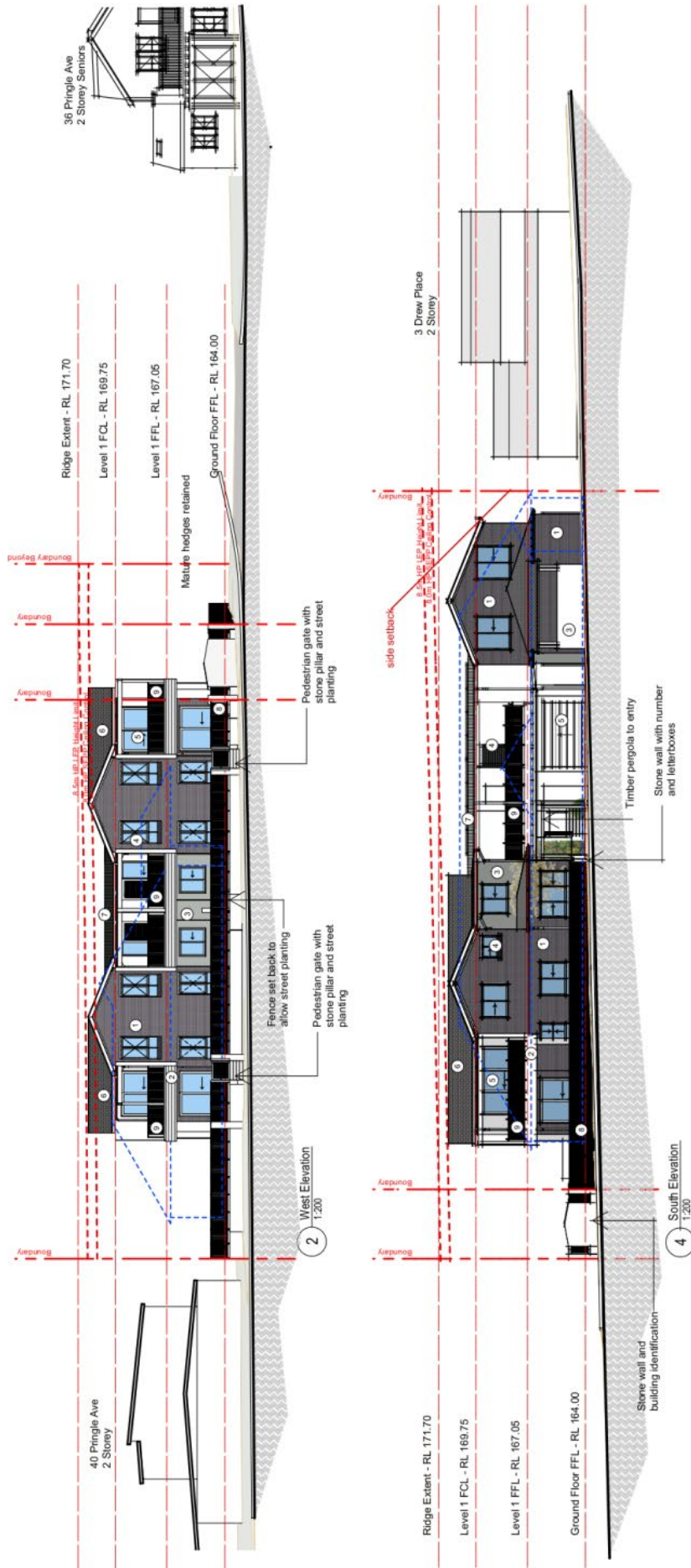
Date: 1/3/21  
Drawn:  
Checked:  
Rev: E  
Drawing Number: DA02

Title: Roof Plan  
Project: Seniors Development - Newquest  
1 Drew Place, Belrose

REV	DESCRIPTION	BY	DATE
B	Draft DA Issue	MO	7/7/20
C	Draft DA Issue	MO	9/7/20
D	DA Issue	MO	23/7/20
E	Unit 5 reduced pergola	TB	1/3/21

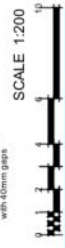
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ABN: 93 053 938 579  
DrewPlace DA Plans - trav6.vww  
This document is the work of Turner Hughes Architects Pty Ltd





**MATERIALS LEGEND**

- 1 FACED BRICK  
Australian Bricks
- 2 CEMENT RENDER - White  
bargas in matching white paint.
- 3 CEMENT RENDER - Grey
- 4 ALUMINIUM POWDER COAT - WHITE  
Windows, Balustrades and Screens.
- 5 TIMBER DOOR  
GARAGE DOOR
- 6 TILE ROOF  
Dark grey  
Monitor - Median
- 7 METAL SHEET ROOF  
Colourbond Trondle 5°
- 8 WHITE ALUMINIUM  
HANDRAIL  
Aluminium handrail  
with 40mm gaps
- 9 WHITE ALUMINIUM  
FENCE  
Aluminium fence  
with 40mm gaps

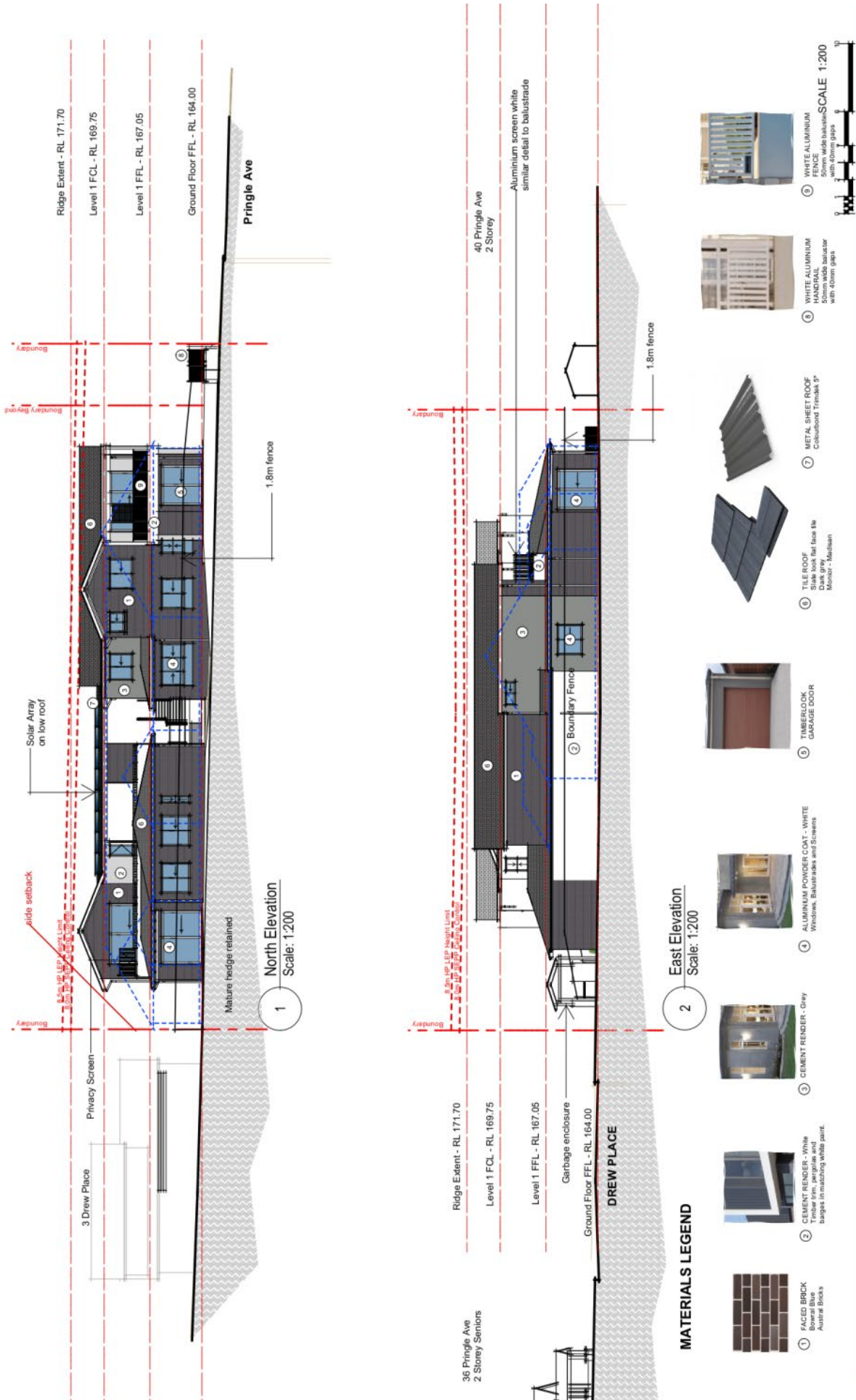


Date: 1/3/21  
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Rev: C  
Drawing Number: DA08

**Title:**  
**Elevations 01**  
**Project:**  
**Seniors Development - Newquest**  
**1 Drew Place, Belrose**

REV	DESCRIPTION	BY	DATE
A	Draft DA Issue	MO	8/7/20
B	DA Issue	MO	23/7/20
C	Unit 5 reduced pergola	MO	1/3/21

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NOM: Architect - Rick Turner NSW 4318  
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Date: 21/8/20  
Scale: 1:200  
Drawn:  
Checked:

Rev: B  
Drawing Number: DA09

Title:  
Elevations 02

Project:  
Seniors Development - Newquest  
1 Drew Place, Belrose

REV DESCRIPTION BY DATE

A Draft DA Issue MO 8/7/20

B DA Issue MO 23/7/20

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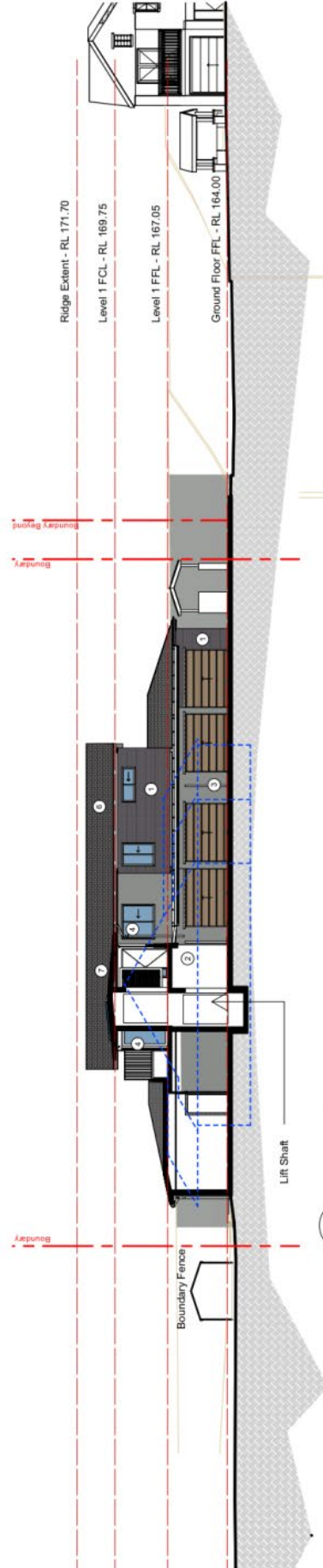
ABN: 93 053 938 579  
Norm. Architect - Rick Turner NSW 4318  
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1 Courtyard Elevation West  
Scale: 1:200



2 Eastern Courtyard Elevation  
Scale: 1:200

#### MATERIALS LEGEND



1 FACED BRICK  
Bowral Blue  
Austrial Bricks



2 CEMENT RENDER - White  
Timber trim, porcelain and  
targets in matching white paint.



3 CEMENT RENDER - Grey



4 ALUMINUM POWDER COAT - WHITE  
Windows, Balustrades and Screens



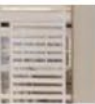
5 TIMBERLOOK  
GARAGE DOOR



6 TILE ROOF  
Slate look flat face tile  
Dark grey  
Marmor - Maridian



7 METAL SHEET ROOF  
Colourbond Trimble 9°



8 WHITE ALUMINUM  
HANDRAIL  
50mm wide baluster  
with 40mm gaps



9 WHITE ALUMINUM  
FENCE  
50mm wide baluster  
with 40mm gaps

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Title:  
Elevations 03

Project:  
Seniors Development - Newquest  
1 Drew Place, Belrose

REV	DESCRIPTION	BY	DATE
A	Draft DA Issue	MO	8/7/20
B	DA Issue	MO	23/7/20

Date: 4/8/20  
Drawn:  
Checked:  
Drawing Number:  
Rev: B

Scale: 1:200